No. 89-1290-CFX
Status: GRANTED

Title: Robert R. Freeman, et al., Petitioners
v.
Willie Eugene Pitts, et al.

Docketed:
February 12, 1990

Court: United States Court of Appeals
for the Eleventh Circuit

Counsel for petitioner: Lee,Rex E.

Counsel for respondent: Hansen,Christopher A.,
Chachkin,Norman J.

NOTE: Due 021190-SUN

Entry	Date	Note	Proceedings and Orders
1	Nov 22 1989	P	Application (A89-401) for a stay of mandate of Eleventh Circuit, submitted to Justice Kennedy.
2	Nov 22 1989		(A89-401) Order that the mandate of the United States Court of Appeals for the Eleventh Circuit, case Nos. 88-8687 and 88-8775, is stayed pending receipt of response to the application to be filed on or before 4:00 p.m. Tuesday, November 28, 1989 and referral of the matter to the Court for consideration at the conference on Friday, December 1, 1989.
3	Nov 28 1989		Response to application (A89-401) filed by respondents.
4	Nov 29 1989		(A89-401) Reply to opposition filed by petitioners.
5	Dec 4 1989		(A89-401) The application for stay of mandate of the United States Court of Appeals for the Eleventh Circuit presented to Justice Kennedy and by him referred to the Court is denied. The order heretofore entered by Justice Kennedy on November 22, 1989 is vacated.
6	Feb 12 1990	G	Petition for writ of certiorari filed.
7	Mar 5 1990		Brief amicus curiae of Georgia School Boards Assn. filed.
10	Mar 5 1990	X	Brief amicus curiae of National School Boards Assn. filed.
8	Mar 14 1990		DISTRIBUTED. March 30, 1990
9	Mar 16 1990	X	Brief of respondents Pitts, Willie, et al. in opposition filed.
11	Mar 23 1990	X	Reply brief of petitioners Robert Freeman, et al. filed.
12	Nov 29 1990		Supplemental brief of petitioners Freeman, et al. filed.
13	Jan 14 1991		REDISTRIBUTED. January 18, 1991
15	Feb 1 1991		REDISTRIBUTED. February 15, 1991
16	Feb 19 1991		Petition GRANTED.
			**********
18	Mar 27 1991		Order extending time to file brief of petitioner on the merits until May 3, 1991.
22	May 1 1991		Brief amicus curiae of Intervenors in Carlin v. Bd. of Education San Diego filed.
19	May 3 1991		Joint appendix filed.
		*	Volumes I and II
20	May 3 1991		Brief of petitioner Robert Freeman, et al. filed.
21	May 3 1991		Brief amici curiae of Plaintiff-Intervenors filed.
23	May 3 1991		Brief amicus curiae of United States filed.
24	May 3 1991		Brief amicus curiae of Southeastern Legal Foundation, Inc. filed.

No. 89-1290-CFX

Entry	Date	Note	Proceedings and Orders
25	May 16 1991	G	Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument filed.
26	May 28 1991		Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument GRANTED.
28	May 29 1991		Order extending time to file brief of respondent on the merits until June 21, 1991.
29	Jun 21 1991		Brief amici curiae of NAACP, et al. filed.
30	Jun 21 1991		Brief amicus curiae of Lawyers' Committee for Civil Rights Under Law filed.
31	Jun 21 1991		Brief of respondents Willie Pitts, et al. filed.
32	Jul 15 1991		CIRCULATED.
33	Jul 19 1991		SET FOR ARGUMENT MONDAY, OCTOBER 7, 1991. (1ST CASE)
34	Jul 24 1991	X	Reply brief of petitioners Robert Freeman, et al. filed.
35	Aug 14 1991		Record filed.
		*	Received certified record from USCA 11.
36	Oct 7 1991		ARGUED.

Supreme Court, U.S.
FILED
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CLERK

89-1290

No. ———

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

ROBERT R. FREEMAN, *et al.*,
Petitioners,

v.

WILLIE EUGENE PITTS, *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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February 12, 1990

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QUESTIONS PRESENTED

1. Whether a school district is barred from obtaining a finding of unitariness with respect to student assignments solely because other aspects of the school district's operations, such as faculty assignments, have not simultaneously achieved unitary status for a period of three years.

2. Whether a formerly *de jure* school district, which achieved effective desegregation in student assignments in 1969 by closing its black-only schools and adopting a court-ordered neighborhood school plan, is nevertheless obligated to remedy the segregative effects of massive demographic changes that occurred over the past 20 years which were completely beyond the school district's control.

LIST OF PARTIES

In addition to the parties listed in the caption, the following persons, members of the DeKalb County Board of Education, are additional petitioners:

Lyman Howard
Norma Travis
Phil McGregor
Donna Wagner
Elizabeth Andrews

The following persons, as individual representatives of the class of minor plaintiffs, are additional respondents:

Victor Martin
Kelvin Henderson
Felicia Henderson
Alfred Henderson
Orma Henderson
Alfredia Henderson
Patricia Joyce Reeves
Anthony Reed
Cecilia Searcy
Ned Stone
Becky Stone
Joy Becker
Bridget Becker
Sandra Becker
Monica Rocker
John Johnson
Devett Smith
Frankie Prather
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Mark Anthony Wharton

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
LIST OF PARTIES	ii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISIONS INVOLVED	2
STATEMENT	2
REASONS FOR GRANTING THE PETITION	11
CONCLUSION	21

TABLE OF AUTHORITIES

CASES

	Page
Board of Educ. of Valdosta, Georgia v. *United States*, 439 U.S. 1007 (1978)	15
Brown v. *Board of Educ.*, No. 87-1668, slip op. (10th Cir. 1989)	19
Bowman v. *County School Bd.*, 382 F.2d 326 (4th Cir. 1967)	2
Dayton Bd. of Educ. v. *Brinkman*, 433 U.S. 406 (1977)	16
Estes v. *Metropolitan Branches of the Dallas NAACP*, 444 U.S. 437 (1980)	17, 21
Green v. *County School Bd.*, 391 U.S. 430 (1968)	*passim*
Keyes v. *School Dist. No. 1*, 413 U.S. 189 (1973)	20
Keyes v. *School Dist. No. 1*, No. 85-2814, 1990 Westlaw 5661 (10th Cir. Jan. 31, 1990)	14
Milliken v. *Bradley*, 418 U.S. 717 (1974)	12, 16, 17
Milliken v. *Bradley*, 433 U.S. 267 (1977)	12, 16, 17
Morgan v. *Nucci*, 831 F.2d 313 (1st Cir. 1987)	*passim*
Pasadena City Bd. of Educ. v. *Spangler*, 427 U.S. 424 (1976)	*passim*
Swann v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971)	*passim*
United States v. *Jefferson County Bd. of Educ.*, 380 F.2d 385 (5th Cir.), *cert. denied*, 389 U.S. 840 (1967)	3
United States v. *Montgomery County Bd. of Educ.*, 395 U.S. 225 (1969)	12
United States v. *Overton*, 834 F.2d 1171 (5th Cir. 1987)	14, 19, 20
Washington v. *Davis*, 426 U.S. 229 (1976)	5
Youngblood v. *Board of Pub. Instruction*, 448 F.2d 770 (5th Cir. 1971)	5

STATUTES

	Page
28 U.S.C. § 1254(1)	2

TABLE OF AUTHORITIES—Continued

	Page
CONSTITUTIONAL AMENDMENTS	
U.S. Const. amend. XIV, § 1	2
OTHER AUTHORITIES	
Note, *Eliminating the Continuing Effects of the Violation: Compensatory Education as a Remedy for Unlawful School Segregation*, 97 Yale L.J. 1173 (1988)	15
U.S. Department of Justice, Educational Opportunity Litigation Section, *Case Load List* (May 1988)	21

IN THE

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OCTOBER TERM, 1989

No. ——

ROBERT R. FREEMAN, *et al.*,
Petitioners,

v.

WILLIE EUGENE PITTS, *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Robert R. Freeman, *et al.*, the members of the DeKalb County Board of Education ("the Board") and representatives of the DeKalb County School System ("DCSS"), hereby petition for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-24a) is reported at 887 F.2d 1438 (11th Cir. 1989). The district court's memorandum opinion and order of June 30, 1988 (App., *infra*, 25a-72a) is not reported.

JURISDICTION

The opinion of the court of appeals was entered on October 11, 1989. App., *infra*, 1a-24a. Rehearing was denied on November 13, 1989. App., *infra*, 83a-84a. The

jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the Constitution of the United States provides, in relevant part, that:

> No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, § 1.

STATEMENT

1. DeKalb County, Georgia, which surrounds the cities of Atlanta and Decatur to the north, east and south, is a predominately urban and suburban region with a population of more than 450,000. App., *infra*, 38a. The DeKalb County School System ("DCSS") presently serves almost 80,000 students in more than 90 schools and is the largest school district in the state. App., *infra*, 3a. In 1968, black students constituted approximately 6% of the DCSS student population; as of 1986, black students constituted 47% of that population. App., *infra*, 4a, 74a.[1]

Prior to the 1966-1967 school year, the DCSS had maintained dual attendance zones for blacks and whites. In the 1966-1967 school year, the DCSS replaced the dual zones with a system of geographic zones and a "freedom of choice" transfer plan. However, that "system had no significant impact on the former de jure black schools." App., *infra*, 33a. In 1968, this Court held in *Green* v. *County School Bd.*, 391 U.S. 430, 440 (1968), that if a freedom of choice plan "fails to undo segregation, other means must be used to achieve this end." (quoting *Bow-*

[1] The most recent school board report to the district court, dated December 12, 1989, shows that the student population consists of 57% black students. Hispanic and Oriental students comprise an additional 7% of the student population.

man v. *County School Bd.*, 382 F.2d 326, 333 (4th Cir. 1967).

Almost immediately after that decision, the respondents, certain black school children in DeKalb County and their parents, filed this class action in the United States District Court for the Northern District of Georgia on behalf of all black school children in the county. App., *infra*, 25a. The complaint alleged that the DCSS operated a racially segregated school system. App., *infra*, 26a; *Pitts* v. *Cherry*, Complaint, No. 11946, at ¶ 9-10 (N.D. Ga. July 5, 1968). Following the filing of this action, the DCSS immediately and "voluntarily undertook to work with the Department of Health, Education and Welfare (HEW), to develop a final and terminal plan of desegregation." App., *infra*, 26a. Less than one year after the filing of the complaint, after full briefing and hearings, the district court entered its desegregation order. App., *infra*, 33a, 74a. That order "abolished the 'freedom of choice' plan and implemented a single neighborhood school attendance policy." App., *infra*, 33a, 8a. In addition, "[a]ll of the remaining de jure black schools from the previous dual system were closed." *Id.* at 33a.[2]

After the district court's initial desegregation order, the case remained largely inactive until 1975, app., *infra*, 8a, when respondents sought certain modifications in the operation of the school system, including the majority-

[2] The 1969 order was derived, in large part, from the form decree set forth by the old Fifth Circuit (*i.e.*, the court as constituted before it was split into the Eleventh and Fifth Circuits) in *United States* v. *Jefferson County Bd. of Educ.*, 380 F.2d 385 (5th Cir.) (en banc), *cert. denied*, 389 U.S. 840 (1967). Consequently, certain portions of the order were irrelevant to the situation in DeKalb County. For example, the requirement that certain special programs be instituted at former all-black schools (app., *infra*, 81a-82a) had no application in DeKalb County because all formerly all-black schools were closed.

to-minority ("M-to-M") program,[3] the assignment of staff and the drawing of certain school attendance zones. App., *infra*, 26a n.1. In response, the district court ordered certain adjustments in its outstanding injunction, including a requirement that the M-to-M program be revised to provide free transportation. App., *infra*, 8a. The court also created a court-appointed Bi-racial Committee to oversee "proposed boundary line changes, school openings and closings, and the M-to-M program." App., *infra*, 4a, 8a, 26a. Between 1977 and 1979, the DCSS also filed several motions in the court seeking relatively minor modifications of the 1969 decree. App., *infra*, 8a.[4] For the most part, however, the district court "has rarely been asked to intervene" in the operation of the school system and the "parties have worked together in the best interest of the [DCSS]." App., *infra*, 26a.

In 1983, the respondents returned to the district court contending, in part, that "the DCSS's proposed expansion of predominately white Redan High School" would have

[3] Under this voluntarily implemented program, students may transfer from schools in which their race is a majority to schools in which their race is a minority. App., *infra*, 4a.

[4] In 1977, the court approved the Board's boundary line change for one of the elementary schools, after determining, following full briefing and hearing, that the proposed change met constitutional standards. App., *infra*, 26a n.1. In 1978, the district court denied the Board's request to exclude kindergarten and special education programs from the M-to-M program. *Id.* In 1979, the Board—at the request of the Bi-racial committee—moved to amend the M-to-M program so that only those schools whose percentage of black students did not exceed system-wide percentages of black students would be eligible to receive transfers of black students. The "Bi-racial Committee had suggested that such a limitation might help stop white flight from transitional schools and neighborhoods." *Id.* The district court, however, concluded that the shifting racial composition in certain schools in the southern portion of the county "was caused by the changing complexion of the neighborhoods, rather than the effect of the M-to-M program," *id.* at 27a n.1, and accordingly denied the motion.

a segregative effect (app., *infra*, 8a) and seeking an injunction to halt the expansion. In the course of ruling on that motion, the district court made a finding that "the DCSS achieved unitary status." App., *infra*, 9a. The court reasoned that, based on that observation, there was no basis for ordering the additional relief sought by respondents, because "the school board's decision to build the addition to Redan was not motivated by unlawful racial considerations." *Pitts* v. *Freeman*, No. 11946, Mem. Opinion (2/22/84), at 8 (quoting *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 28 (1971); *Washington* v. *Davis*, 426 U.S. 229, 240 (1976)); see app., *infra*, 8a-9a.

On appeal, a panel of the Eleventh Circuit reversed, holding that the district court erred in declaring the DCSS to be a unitary system without following the established procedure of providing respondents with notice and a hearing on that issue. *Pitts* v. *Freeman* (*Pitts I*), 755 F.2d 1423, 1426 (11th Cir. 1985); see app., *infra*, 9a.[5] The court of appeals also held that until the DCSS "achieves unitary status" under appropriate standards, the DCSS has a continuing "affirmative duty" to solve its overcrowding "in such a way that it furthers desegregation . . . ." *Id.* at 21a, 9a. "In light of the [petitioners'] affirmative duty to desegregate," the panel concluded that "it was error for the district court to hold that the [DCSS's] planned expansion of Redan High School could be enjoined only if it was motivated by discriminatory intent." 755 F.2d at 1427.[6]

[5] The old Fifth Circuit applied a "three year rule" which required that the district court retain jurisdiction over a school desegregation case for a period of no less than three years. This rule also required that even after three years, the case could not be dismissed without notice to plaintiffs and opportunity for them to show cause why the court should retain jurisdiction. See *Youngblood* v. *Board of Pub. Instruction*, 448 F.2d 770 (5th Cir. 1971).

[6] On remand, the district court concluded that petitioners' plans concerning Redan High School would "foster integration and accom-

2. On January 16, 1986, the petitioners filed in the district court a motion for a declaration that the DCSS had achieved unitary status and for final dismissal of the case. App., *infra*, 27a. The court conducted a three-week trial on those issues. App., *infra*, 9a. In its June 30, 1988 opinion, the district court stated that while the "meaning of unitary status has not been clearly defined by the Supreme Court," app., *infra*, 27a, the decision in *Green* v. *County School Bd.*, 391 U.S. 430, 439 (1968), generally is looked to for the "six pertinent areas [to] examine in deciding whether a school system has met its burden of abolishing the former dual system." App., *infra*, 29a.[7]

With respect to the "primary" *Green* factor, school assignment, the district court found—and the respondents conceded—that "the closing of the black schools in 1969 did, for a time, result in the desegregation of the schools of DeKalb County." App., *infra*, 33a; see *id.* at 35a (Respondents "concede that th[e] action" of closing *de jure* black schools and the implementation of a neighborhood school plan "effectively desegregated the DCSS for a period of time"). Respondents also conceded that the subsequent "resegregation" of many DCSS schools was "the result of demographic shifts" in the population of the county. *Id.* at 34a.[8] The district court concluded

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modate educational needs" while respondents' proposed alternatives would "increase segregation." *Pitts* v. *Freeman*, No. 11946, Mem. Opinion (10/31/85), at 19. Accordingly, the court denied respondents' motion to enjoin implementation of the plan. *Id.*

[7] "These areas include: [1] student assignment, [2] faculty [3] staff, [4] transportation, [5] extracurricular activities, and [6] facilities." App., *infra*, 29a. At the request of the parties, the court also considered "quality of education." *Id.*

[8] "Between 1975 and 1980, approximately 64,000 black citizens moved into southern Dekalb County, most moving from the City of Atlanta." App., *infra*, 38a. At the same time, approximately 37,000 white residents moved from southern DeKalb County. *Id.* "As a result of these demographic shifts, the population of the northern half of DeKalb County is now predominately white and the southern

that petitioners' conduct in no way contributed to the resegregation of the schools. *Id.* at 45a.

The district court then reviewed the steps taken by the DCSS in response to the trend towards "resegregation" caused by demographic changes in the county (app., *infra*, 39a-41a) and the conflicting expert testimony on the question whether the petitioners had done everything they reasonably could to promote desegregation in the schools. App., *infra*, 41a-45a. Based on "the evidence presented at the hearing" and its conclusion that the petitioners' experts were more "reliable," the court found that "the DCSS has done everything that was reasonable under the circumstances to achieve maximum practical desegregation in DeKalb County." App., *infra*, 44a.[9]

In sum, with respect to student assignment, the district court concluded:

> The DCSS has become a system in which the characteristics of the 1954 dual system have been eradicated, or if they do exist, are not the result of past or present intentional segregative conduct by defendants or their predecessors.

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half of DeKalb County is predominately black." *Id.* Black enrollment in the school system also increased dramatically; for example, between 1976 and 1986, DCSS experienced an enrollment decline of 16% at the high school level while the number of black students rose by 119%. App., *infra*, 38a-39a. These dramatic "demographic shifts have . . . had an immense effect on the racial compositions of the DeKalb County Schools." *Id.*

[9] Although petitioners had not "implement[ed] *all* programs" to combat the segregation caused by shifting residential patterns that were belatedly identified by respondents at the hearing on unitary status, the district court rejected the proposition that the DCSS "neglected its constitutional duty to eradicate the vestiges of the former dual system." App., *infra*, 46a. Indeed, the court found:

> the segregation that occurred in DeKalb County would have taken place at approximately the same speed whether or not [petitioners] had implemented the desegregative tools described by [respondents].

Id.

App., *infra*, 47a. Thus, the "defendants have fulfilled their constitutional obligations in this area." App., *infra*, 48a.

With regard to the other *Green* factors, the district court also found that the "DCSS is a unitary system with regard to the areas of student assignments, transportation, physical facilities, and extra-curricular activities." App., *infra*, 71a. However, the court found that the percentages of minority faculty and staff in certain individual schools were out of balance with system-wide percentages of minority faculty and staff. App., *infra*, 48a-60a. Accordingly, the court ordered the DCSS to develop a plan to reassign faculty until "the school staffs (faculty and administrators) of all schools vary from the system-wide minority staff average by no more than 15% . . . ." App., *infra*, 58a. "This plan should also equalize the number of teachers with advanced degrees and more experienced teachers among the types of schools." App., *infra*, 71a.[10] Thus, the district court denied the petitioners' motion to dismiss the case in its entirety, holding that petitioners would have to "comply" with the court's specific requirements concerning faculty, staff and per pupil expenditures before the court would finally declare that the school system had achieved full

[10] With regard to the district court's requirement that petitioners bear the burden of proving that "all students in the DCSS are receiving a quality education" (app., *infra*, 60a)—a non-*Green* factor—the court praised the "innovative" successes of the DCSS but expressed "great concern" over the "differential" in per-pupil expenditures in various schools. The court cited evidence that in "type I" schools (which had been majority white over the last decade), expenditures per pupil were $2,833. In "type II" schools (which have undergone a transition from majority white to majority black over the last decade), expenditures per pupil were $2,540. In "type III" schools (which had been majority black over the last decade), expenditures per pupil were $2,492. App., *infra*, 65a, 70a. Thus, in response to this evidence, the court ordered the DCSS "to attempt to equalize per pupil expenditures among the types of schools during the 1988-89 school year." App., *infra*, 72a.

unitary status with respect to all of the *Green* factors. *Id.* at 72a.

3. The court of appeals reversed. The Eleventh Circuit first held that the trial court had erred in determining the DCSS's unitary status "incrementally" by considering each *Green* factor separately. According to the court,

> a school system does not achieve unitary status until it [simultaneously] maintains at least three years of racial equality in six categories: student assignment, faculty, staff, transportation, extracurricular activities, and facilities.

App., *infra*, 24a.

In so holding, the court of appeals specifically "reject[ed] the First Circuit's ruling [in *Morgan* v. *Nucci*, 831 F.2d 313 (1st Cir. 1987)] which permits school systems to achieve unitary status incrementally" (app., *infra*, 15a), reasoning simply that "[a] school system achieves unitary status or it does not." *Id.* at 16a. Thus, under the Eleventh Circuit's approach, the lower court's findings of unitary status in the areas of transportation, extracurricular activities and facilities would remain open to reexamination. App., *infra*, 17a n.10.

With respect to the district court's holding on student assignment, the Eleventh Circuit did not reverse, as clearly erroneous, the district court's finding that the school system had in no way contributed to the "resegregation" of the schools. App., *infra*, 18a. Instead, the court of appeals held that, as a matter of law, DCSS retained responsibility for any resegregation in student assignment (due to demographic shifts in the county) until unitariness had been achieved in all categories of the school system:

> [A] school system that has not achieved unitary status must take affirmative steps to gain and main-

> tain a desegregated student population. The DCSS may not shirk its constitutional duties by pointing to demographic shifts occurring prior to unitary status.

App., *infra*, 19a.

The court of appeals specifically rejected the argument that a federal court could not "hold [a school system] responsible for segregation not 'caused' by its dual system." *Id.* According to the Eleventh Circuit, the Board's original success in desegregating the DCSS (and the subsequent "cause" of any trend towards resegregation) should not have been considered by the district court:

> The fact that the DCSS achieved racial parity in the area of student assignment . . . does not demonstrate that it fulfilled its duties to achieve maximum possible desegregation and to avoid the reestablishment of a dual system.

App., *infra*, 20a. Because the "affirmative duty" created by the original violation remained in force, the court "reject[ed] the district court's refusal to require the DCSS to eradicate segregation caused by demographic changes." App., *infra*, 20a.[11]

In conclusion, the court of appeals called upon the "district court [to] increase its involvement in this case . . . ." App., *infra*, 22a. It warned that

> [t]o comply with our mandate, the DCSS's actions "may be administratively awkward, inconvenient, and even bizarre in some situations and may impose burdens on some." The DCSS must consider pairing

[11] The court of appeals also chastised petitioners for basing their claim of unitary status on a showing of "racial parity," *i.e.*, racial balance in student assignments:

> Just as the [respondents] cannot base a claim of segregation on any particular degree of racial balance, the DCSS cannot support a claim of desegregation with racial percentages.

App., *infra*, 21a n.13.

> and clustering of schools, drastic gerrymandering of school zones, and grade reorganization. The DCSS and the district court must consider busing—regardless of whether the [respondents] support such a proposal.

App., *infra*, 23a (citations omitted). Thus, the court of appeals "order[ed] the district court to require the DCSS to prepare and file a plan in accordance with [its] opinion in the shortest reasonable time." App., *infra*, 24a.[12]

REASONS FOR GRANTING THE PETITION

The Eleventh Circuit has decided two issues of fundamental and recurring importance concerning the scope and limits of federal court authority to achieve desegregation of the public schools. First, the court's holding that "unitary status" is achieved with respect to *any Green* factor only when all aspects of a school system are maintained in some undefined level of racial balance for a predetermined period of time gives rise to an acknowledged conflict with the decision of the First Circuit in *Morgan* v. *Nucci*, 831 F.2d 313 (1st Cir. 1987). Such a holding also undermines the authority of *Pasadena City Bd. of Educ.* v. *Spangler*, 427 U.S. 424, 436 (1976), in which this Court held that a school board's failure to comply with a desegregation plan with respect to faculty hiring and promotion "did not undercut" the achievement of unitary status in student assignment.

Second, the Eleventh Circuit's holding that petitioners "must take affirmative steps to gain and maintain a desegregated student population"—despite the fully supported finding by the district court that the "resegregation" resulted solely from demographic shifts completely

[12] Petitioners do not seek review of the adverse lower court rulings regarding teacher assignments and resource allocation. Instead, in reports to the district court dated September 29, 1989 and August 3, 1989, the DCSS has shown what it believes to be full compliance with the district court's outstanding orders in these areas.

beyond petitioners' control—conflicts with this Court's decision in *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 31 (1971). *Swann* specifically noted that school boards have no obligation to "make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial segregation through official action eliminated from the system." The holding of the court of appeals undermines the basic remedial principle that while the Constitution requires the dismantling of dual school systems, it does not mandate racial balance in the schools. *Milliken* v. *Bradley*, (*"Milliken I"*), 418 U.S. 717, 740-741 (1974). By significantly expanding federal authority to order state and local officials to remedy *de facto* segregation, the holding also undermines the role of federalism as a significant limitation upon a federal court's equitable authority.

1. It is well-established that the constitutional violation in a "dual" school system may be found to permeate "every facet of school operations," including (1) student assignment, (2) faculty, (3) staff, (4) transportation, (5) extracurricular activities and (6) facilities. See *Green* v. *County School Bd.*, 391 U.S. 430, 435 (1968). Accordingly, a federal court's responsibility in remedying a violation and bringing a school system into "unitary" status also must focus on each of these distinct factors. See, *e.g.*, *Milliken* v. *Bradley*, (*Milliken II*) 433 U.S. 267, 282-83 (1977); *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 18-19 (1971); *United States* v. *Montgomery County Bd. of Educ.*, 395 U.S. 225, 231-32 (1969). The important question presented here is whether, in measuring the success of a remedy, the court properly may consider the attainment of unitary status "incrementally," *i.e.*, with respect to each discrete aspect of the school system. The Eleventh Circuit now has flatly rejected an incremental approach, holding that a school district may be deemed "unitary" only if it demonstrates "racial equality" in all six *Green* factors *at the same time* for a period of at least three years. App., *infra*, 24a.

In so holding, the Eleventh Circuit expressly "reject[ed] the First Circuit's ruling [in *Morgan* v. *Nucci*, 831 F.2d 313 (1st Cir. 1987)] which permits school systems to achieve unitary status incrementally." App., *infra*, 15a.[13] *Morgan* involved an appeal from several district court remedial orders, including an order which required the Boston School Board to "*maintain* specific racial mixes in the city's schools, much like the balances they ha[d] been required to *achieve* during the 12 years in which the district court actively controlled the desegregation process." 831 F.2d at 317. The defendants in *Morgan*—like petitioners—objected to that order on the ground that, in the area of student assignments, Boston schools had achieved unitary status years before the order was entered. *Id.* ("pupil assignments were as much in conformity to the court's desegregation plan as could ever practically be expected"). Although the First Circuit agreed that unitary status had been achieved with respect to pupil assignments, it also noted that overall "'unitariness' (*i.e.*, complete desegregation) in *all* aspects of the Boston schools has not yet been achieved." *Id.* at 318.

Thus, the court confronted the "threshold question" of whether "the failure of the Boston system to have reached unitariness in areas other than student assignments (such as in faculty hiring) provides justification for the district court to continue to impose its specific student assignments plan." *Id.* According to the First Circuit,

> [u]nder the Supreme Court's decision in [*Spangler*, 427 U.S. 424 (1976)], we believe the answer to this question is clearly "no."

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[13] The First Circuit's approach gives recognition to the fact that unitariness is "less a quantifiable 'moment' in the history of a remedial plan than it is the general state of successful desegregation." *Morgan*, 831 F.2d at 321.

Id. Thus, the First Circuit concluded that its "primary inquiry" was not (as the court below held) the "overall" success of the plan but rather "whether unitariness has been reached *in the area of student assignments* itself." *Id.* (emphasis in the original); see *United States* v. *Overton*, 834 F.2d 1171, 1177 (5th Cir. 1987) (expressly agreeing with *Morgan* analysis); *Keyes* v. *School Dist. No. 1*, No. 85-2814, 1990 Westlaw 5661 (10th Cir. Jan. 31, 1990) (same).

In reaching this decision, the First Circuit placed heavy reliance on this Court's decision in *Pasadena City Bd. of Educ.* v. *Spangler*, 427 U.S. 424 (1976). In *Spangler*—as in the decision below and in *Morgan*—initial implementation of a desegregation plan had effectively remedied the racial imbalance in student assignments. 427 U.S. at 435 ("no one contests that [the plan's] implementation did 'achieve a system of determining admission to the public schools on a nonracial basis' "). Nevertheless, the district court had imposed an obligation on defendants to continue race-based student assignments to ensure that there would be no school in the district "with a majority of any minority students." *Id.* at 429.

In reversing that order, this Court recognized that "[i]t may well be that [defendants] have not yet totally achieved the [entirely] unitary system contemplated by [*Swann*]." *Id.* at 436. "There has been, for example, dispute as to [defendants'] compliance with those portions of the plan specifying procedures for hiring and promoting teachers and administrators." *Id.* Nevertheless, the Court stated that the lack of unitary status as to some *Green* factors "does not undercut the force of the principle underlying . . . *Swann*." 427 U.S. at 436 (quoting *Swann*, 402 U.S. at 31-32 (court's equitable authority ended when racial discrimination through official action had been eliminated)).

This Court specifically noted the argument of counsel for the original plaintiffs in *Spangler* who insisted that

> the District Court's perpetual 'no majority of any minority' requirement was valid and consistent with *Swann*, at least until the school system achieved 'unitary' status in all other respects such as the hiring and promoting of teachers and administrators.

427 U.S. at 438 n.5. Although the Court concluded that those "arguments [we]re not properly before" the Court, because the "case is moot with regard to these plaintiffs," the Court nevertheless observed that the argument had "little substance." *Id.*[14]

Thus, the Eleventh Circuit's holding with respect to "incremental unitariness" directly conflicts and is inconsistent with the decision of another court of appeals and with the most directly applicable decisions of this Court. Moreover, the decision below unjustifiably promotes the "interminable pendency of school desegregation litigation . . . [which] is precisely what was condemned in *Pasadena*." *Board of Educ. of Valdosta, Georgia* v. *United States*, 439 U.S. 1007 (1978) (Rehnquist, J., dissenting from denial of certiorari). Indeed, the Eleventh Circuit's pronouncement of a new standard of "unitariness" comes more than 20 years after implementation of the remedial plan which "result[ed] in the desegregation of the schools of DeKalb County." See app., *infra*, 33a; App., *infra*, 35a.

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[14] In concluding that *Spangler* "does not support an incremental approach to school desegregation cases," app., *infra*, 16a, the court below limited *Spangler* to its facts, stating that "[i]n *Spangler* the Court simply refused to approve the [school system's] rigid requirement that no minority comprise a majority of any school population." *Id.* The court below also pointed out that a student law review note had "criticiz[ed] [the] *Morgan* court for 'wrongly citing [*Spangler*] for [the] proposition that a district court may confer unitary status on pupil assignments even if other facets of the school system retain discriminatory vestiges." App., *infra*, 16a-17a (citing Note, *Eliminating the Continuing Effects of the Violation: Compensatory Education as a Remedy for Unlawful School Segregation*, 97 Yale L.J. 1173, 1191 n.104 (1988)).

To be sure, a school board operating an unconstitutionally segregated system has an affirmative obligation to remedy all vestiges of past discrimination. But that principle does not require the concomitant rule that a school board must bring all facets of its school system into balance simultaneously before any amount of judicial supervision can be eliminated. The rule allowing incremental unitariness not only recognizes the practical difficulties of desegregating a large school system, but also respects the "vital national tradition" of local school board autonomy by returning control to the board as quickly as circumstances justify. See *Dayton Bd. of Educ.* v. *Brinkman*, 433 U.S. 406, 410 (1977). In sum, the question of the proper steps to take in deciding whether to terminate a federal court's supervision of local school decisionmaking is a matter of conflicting opinion among the courts of appeals and of tremendous practical importance to school boards.

2. It is a long-settled principle that, in formulating a remedy in a school desegregation case, "the nature of the violation determines the scope of the remedy." *Swann*, 402 U.S. at 16; see *Milliken II*, 433 U.S. at 280 ("the nature of the desegregation remedy is to be determined by the nature and scope of the constitutional violation"); *Milliken* v. *Bradley* (*"Milliken I"*), 418 U.S. 717 (1974). "[F]ederal-court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation." *Milliken II*, 433 U.S. at 282; see also *Spangler*, 427 U.S. 424. These "limits" on federal court authority "are in part tied to the necessity of establishing that school authorities have in some manner *caused* unconstitutional segregation." *Spangler*, 427 U.S. at 434 (emphasis added); see *Dayton*, 433 U.S. at 420 (desegregation remedy must focus on the "incremental segregative effect" of specific constitutional violations, *i.e.*, the

extent of segregation caused by the violations); see *Milliken I*, 418 U.S. at 746; *Milliken II*, 433 U.S. at 280.

These same principles—that derive from core notions of federalism—should apply in determining whether a remedy has been successful in eliminating the effects of the intentionally segregative conduct, thereby freeing a school district from federal court supervision in areas in which the remedy has been successful. Although "[t]his Court has not considered seriously the relationship between the resegregation problem and desegregation decrees," *Estes* v. *Metropolitan Branches of the Dallas NAACP*, 444 U.S. 437, 448 (1980) (Powell, J., dissenting), at the very least, *Spangler* stands for the proposition that "causation" remains a crucial requirement in determining whether a local school board is responsible for "resegregation" that occurs after successful implementation of a remedial order.

In *Spangler*, this Court held that where a remedial order has "established a racially neutral system of student assignment," 427 U.S. at 434, the district court "exceeded its authority" in continuing to "require annual readjustment of attendance zones" to maintain racial balance in student assignment. *Id.* at 435. The Court emphasized that the order imposed by the district court exceeded its authority because there was no causal link between "a constitutional violation" and the "judicially order[ed] assignment of students on a racial basis." *Id.* at 434. The Court quoted from *Swann*:

> Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system.

Spangler, 427 U.S. at 436 (quoting *Swann*, 402 U.S. at 32). Because the district court in *Spangler*—like the

district court in this case [15]—already had "implemented a racially neutral attendance pattern in order to remedy" the constitutional violation that had been found, the district court "had fully performed its function" (*id.* at 437) and its responsibilities for that portion of the case were discharged. *Id.*

In holding that "a school system that has not achieved unitary status must take affirmative steps to gain and maintain a desegregated student population" (app., *infra*, 19a), the decision below is in conflict with this Court's decision in *Spangler*. More broadly, in rejecting the proposition that the federal courts could not "hold [the DCSS] responsible for segregation not 'caused' by its dual system" (app., *infra*, 19a), the Eleventh Circuit's decision has read the "causation" requirement of *Swann*, *Milliken* and *Spangler* out of the remedial stage of school desegregation litigation, replacing it with a form of strict liability.[16]

The decision below also is in conflict with the decisions of those courts of appeals that recognize that implementation of an effective desegregation decree shifts the burden to the plaintiffs to prove that any segregation that subsequently results was caused by intentionally

[15] In the decision below, as in *Spangler*, all parties concede "[t]he fact that the DCSS achieved racial parity in the area of student assignment" at the time that it closed the *de jure* black schools and implemented a strict neighborhood attendance policy. App., *infra*, 20a.

[16] According to the Eleventh Circuit, the Board's original success in desegregating the DCSS (and the subsequent "cause" of any trend towards resegregation) were simply irrelevant to the legal inquiry that should have been undertaken by the district court:

> The fact that the DCSS achieved racial parity in the area of student assignment . . . does not demonstrate that it fulfilled its duties to achieve maximum possible desegregation and to avoid the reestablishment of a dual system.

App., *infra*, 20a.

segregative conduct on the part of the school board. As the Fifth Circuit has noted,

> continuing limits imposed as a remedy after the wrong is righted effectively changes the constitutional measure of the wrong itself; it transposes the dictates of the remedy for the dictates of the constitution and, of course, they are not interchangeable.

Overton, 834 F.2d at 1176.[17] The court below, in ordering the school board to remedy the lack of racial balance caused by demographic changes, has done exactly what the Fifth Circuit warned against: it has substituted racial balance rather than the "undoing" of unlawful segregation as the baseline of the remedial order.[18]

Despite the Eleventh Circuit's understandable desire to "protect" the goal of an integrated student body,

> accommodation of federal superintendence and federalism will not tolerate the idea that although the wrong is righted, the magnitude of the past wrong

[17] The Fifth Circuit stated that the desire to press for remedies beyond the segregation caused by the constitutional violation "rests upon a fear that the fourteenth amendment, proscribing as it does only purposeful discrimination, inadequately protects desegregation gains . . . ." *Overton*, 834 F.2d at 1176. The Eleventh Circuit's insistence that the school board achieve "maximum possible desegregation" by "eradicat[ing] segregation caused by demographic changes" (app., *infra*, 20a) reflects precisely such a fear.

[18] The Eleventh Circuit's rejection of any inquiry into the causal relationship between current racial inbalance and the prior *de jure* segregation also is in conflict with the Tenth Circuit's unitariness standard. See *Brown* v. *Board of Educ.*, No. 87-1668, slip op. at 22 (10th Cir. 1989) (in determining unitary status, the "school district must show that no causal connection exists between past and present segregation . . . ."); *id.* at 26A ("the school board . . . bears the burden of proving that current racial disparities in the school system are not the result of the prior segregated school system"). Of course, the district court in this case found that the DCSS has satisfied precisely that burden of proof.

> nonetheless justifies perpetuation of a federal order limiting the ambit of a school district's self-goverance.

Overton, 834 F.2d at 1177. The standard adopted by the court below simply fails to recognize that "[i]t is state government that [the court was] asked to enjoin" and that, "having righted the wrong, the limits [the court should] impose on the state can be drawn no more tightly than the limits of the Constitution." *Id.*

This Court has not directly addressed the question of the standard to be applied in determining whether a former "dual system" has achieved unitary status. Nevertheless, the decisions of this Court indicate that school authorities have to satisfy the court that their [current] racial composition is not the result of present or past discriminatory action on their part." *Swann*, 402 U.S. at 26; *see Keyes* v. *School Dist. No. 1*, 413 U.S. 189, 211 n.17 (1973) (school authorities' burden "to show that current segregation is in no way the result of those past segregative actions"). Where, as here, this burden is met, school authorities have no further "duty" to remedy a lack of racial balance due to demographic factors. See *Swann*, 402 U.S. at 28 ("[a]bsent a constitutional violation there would be no basis for judicially ordering assignment of students on a racial basis"). In sum, the decision below is contrary to the basic principles of desegregation remedies set forth in the decisions of this Court and therefore warrants this Court's review.

At bottom, the rule imposed by the Eleventh Circuit necessarily will lead to unfortunate diversions of energy and scarce resources by numerous school boards. Instead of being able to concentrate their remedial efforts in those areas where vestiges of the dual school system remain, school systems are forced to undertake a potentially never-ending effort to obtain a "perfect" racially-balanced solution—a solution that "may be unattainable in the

context of the demographic, geographic, and sociological complexities of modern urban communities." *Estes*, 444 U.S. at 448 (Powell, J., dissenting). Because of the large number of school districts, especially in the Eleventh Circuit, that remain under federal court supervision,[19] it is vital that this Court consider whether a school system "in which the characteristics of [a] dual system have been eradicated" (app., *infra*, 47a) nevertheless can be ordered to undertake potentially extraordinary remedial actions in order to ensure a better racial balance in the schools.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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February 12, 1990

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[19] According to the most recent figures available, 353 school districts nationwide are currently operating under court-ordered desegregation plans. Nearly one-third of those (105) are located in the Eleventh Circuit. Sizeable though these numbers are, they understate the magnitude of the impact of the decision below because they include only those cases in which the federal government has participated. Consequently, they do not include the many desegregation actions, such as this one, which involve only private plaintiffs. See U.S. Department of Justice, Educational Opportunity Litigation Section, *Case Load List* (May 1988).

APPENDICES

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 88-8687

WILLIE EUGENE PITTS, a minor by his mother and next friend, MRS. ANNA MAE PITTS, VICTOR MARTIN; a minor, by his father and next friend ROBERT L. MARTIN; KELVIN, FELICIA, ALFRED, ORMA, and ALFREDIA HENDERSON, minors, by their mother and next friend, REBECCA HENDERSON, PATRICIA JOYCE REEVES, a minor, by her mother and next friend, MRS. ROSA LEE REEVES; ANTHONY REED and CECILIA SEARCY, minors, by their mother and next friend, MRS. JUANITA SEARCY; NED and BECKY STONE, minors, by their father and next friend, ALFRED E. STONE, JR.; JOY, BRIDGETT and SANDRA BECKER, minors, by their father and next friend, LOUIS E. BECKER; MONICA ROCKER, a minor, by her father and next friend, ARTHUR "ROCK" ROCKER; JOHN JOHNSON and DEVETT SMITH, minors, by their mother and next friend, MS. EUNICE A. SMITH; FRANKIE PRATHER, a minor, by guardian and next friend, CYNTHIA SCOTT, and her father and next friend, MAJOR SCOTT; PRINCESS MILLS, a minor, by her father and next friend, ROGER MILLS; MARK ANTHONY WHARTON, a minor, by his mother and next friend DORIS PATILLAR; and all others similarly situated,

Plaintiffs-Appellants,
Cross-Appellees,

ANN T. JOHNSON,
Intervening Plaintiff,

versus

ROBERT FREEMAN, Superintendent, LYMAN HOWARD, NORMA TRAVIS, and PHIL MCGREGOR, DeKalb County Board of Education Members,

Defendants-Appellees,
Cross-Appellants.

No. 88-8775

WILLIE EUGENE PITTS, *et al.*,
Plaintiffs-Appellants,
Cross-Appellees,

versus

ROBERT R. FREEMAN, *et al.*,
Defendants-Appellees,
Cross-Appellants.

Appeals from the United States District Court
for the Northern District of Georgia

(October 11, 1989)

Before FAY and HATCHETT, Circuit Judges, and ALLGOOD*, Senior District Judge.

HATCHETT, Circuit Judge:

In 1985, in this case, we stated:

> The district court['s] . . . characterization of the DeKalb County School System as unitary was error. As the defendants suggest, it is possible that the district court did not intend its use of the word 'unitary' to be equated with the unitary status that requires dismissal of the action. The court may have been stating merely that a constitutionally acceptable desegregation plan was implemented in 1969 thus making the school system unitary in some respects. Yet the district court committed error by applying the wrong standards of proof when it proceeded to require the plaintiffs to prove discriminatory intent, a requirement that ordinarily would be

* Honorable Clarence W. Allgood, Senior U.S. District Judge for the Northern District of Alabama, sitting by designation.

> appropriate only after a finding of full unitary status.
>
> Until the DeKalb County School System achieves unitary status, it has an affirmative duty to eliminate the effects of its prior unconstitutional conduct. The United States Supreme Court has held that a previously segregated school system is under an 'affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch.'

Pitts v. Freeman, 755 F.2d 1423, 1426 (11th Cir. 1985) (*"Pitts I"*) (quoting *Columbus Board of Education v. Penick*, 443 U.S. 449, 459 (1979) and *Green v. County School Board*, 391 U.S. 430, 437-38 (1968)). Despite our admonishments, the district court ruled that the DeKalb County School System ("DCSS") is under no affirmative duty to take steps to desegregate an acknowledged segregated system in the area of student assignment because the DCSS closed all of its de jure black schools in 1969. Although we affirm the district court's ultimate conclusion that the DCSS has not yet achieved unitary status, we reverse the district court's ruling that the DCSS has no further duties in the area of student assignment.

I. FACTS

A. Racial Composition of the DeKalb County School System

1. Students

The DeKalb County School System ("DCSS") serves 79,991 students in more than 90 schools.[1] Black students

[1] The district court and the parties agreed to use September, 1986, as a cut-off date for statistical information. Statistics concerning white students include non-black minority students. Non-black minority students constitute less than 1-percent of the DCSS student population.

constitute 47-percent of the DCSS population. Despite the system's racial balance, 50-percent of the black students attend schools with black populations of more than 90-percent. Similarly, 27-percent of the DCSS's white students attend schools with white populations of more than 90-percent.[2] The DCSS operates a segregated school system.

The DCSS maintains several programs to combat segregation. First, the DCSS maintains a Minority-to-Majority program ("M-to-M" program) that permits students to transfer from schools in which their race is a majority to schools in which their race is a minority. Approximately 4,500 students, almost all black, participate in the M-to-M program. Second, the DCSS maintains a magnet school program that includes a performing arts program, two science programs, and a foreign language program. The DCSS plans to add at least five more programs, including two occupational education centers. Third, the DCSS maintains a court-appointed biracial committee to review proposed boundary line changes, school openings and closings, and the M-to-M program.

2. Faculty and Staff

a. Administrators

Black persons constitute approximately 30-percent of DCSS elementary school administrators (principals, assistant principals, and lead teachers). Yet, black administrators constitute less than 10-percent of the administrators in majority white schools. Conversely, black administrators constitute 60-percent of DCSS administrators in schools with black populations of more than

[2] In addition, 62-percent of the DCSS's black students attend 30 schools with black populations at least 20-percent higher than the system average. Fifty-nine percent of its white students attend 37 schools with white populations at least 20-percent higher than the average.

81-percent. Additionally, the DCSS assigns 13 of 18 black elementary school principals to schools in which the black student population is more than 90-percent.

At the high school level, the DCSS employs 27-percent black administrators. The percentage of black administrators at each school rises according to the size of the black student population. In majority white high schools, black administrators constitute only 22-percent of the administrators. In high schools with black student populations between 41-percent and 80-percent, black administrators constitute 45-percent of the administrators. In high schools with black student populations of more than 81-percent, black administrators constitute more than 63-percent of the administrators. In addition, the DCSS assigns 4 of 5 black high school principals to schools with black student populations of more than 95-percent.

b. Teachers

Black teachers constitute approximately 27-percent of DCSS faculty. Yet, 17 school faculties deviate by more than 10-percent from the system average.

The DCSS maintains a transfer program for experienced teachers. Teachers with more than 3 years experience at one school may request a transfer to another school. During the 1986-87 school year, 182 teachers requested transfers. The DCSS granted 83 requests. The district court found that the transfer program deterred the DCSS from achieving racial equality among its faculty.

3. Educational Resources

a. Faculty Experience

The district court found that the DCSS assigns experienced teachers and teachers with graduate degrees in a racially imbalanced manner. The district court presented this fact by grouping DCSS schools into three categories: (1) Type I schools (majority white students during last ten years); (2) Type II schools (changed from

majority white students to majority black students during last ten years); and (3) Type III schools (majority black students during the last ten years). The following charts demonstrate the racial skew:

Average Number of Years Teaching

ELEMENTARY SCHOOLS	Fall 1984	Fall 1985	Fall 1986
Type I (majority white)	9.55	10.22	9.79
Type II (white to black)	6.45	6.90	6.36
Type III (majority black)	5.24	5.46	5.19
HIGH SCHOOLS			
Type I	7.99	8.74	8.90
Type II	6.83	7.14	7.08
Type III	5.34	5.68	4.91

Percentage of Teachers with Graduate Degrees

	ELEMENTARY SCHOOLS	HIGH SCHOOLS
Type I	75.76	76.05
Type II	61.84	64.34
Type III	52.63	64.32

b. Per Pupil Expenditures

Using 1984-1985 school year figures, the district court also found that the DCSS spends more money per white student than it spends per black student. The following chart demonstrates the racial imbalance:

Per Pupil Expenditures

Type I	$2,833
Type II	$2,540
Type III	$2,492

B. Racial Composition of DeKalb County

Between 1950 and 1986, DeKalb County grew from 77,000 to 450,000 residents. This growth proceeded in a racially-skewed fashion. Black residents moved primarily to south DeKalb County and white residents moved primarily to north DeKalb County. For example, between 1970 and 1980, north DeKalb County's non-

white population increased 102-percent to 15,365. South DeKalb County's non-white population, however, increased 661-percent to 87,583. In addition, between 1975 and 1980, 37,000 white residents moved from south DeKalb County to neighboring counties.[3]

DeKalb County's demographic changes affected the DCSS. Between 1976-1986, the DCSS elementary school population declined 15-percent. During the same time, however, black elementary student enrollment increased 86-percent. At the high school level, DCSS enrollment declined 16-percent while black enrollment increased 119-percent.

II. PROCEDURAL HISTORY

A. The DCSS Prior to 1969

Historically, the DCSS segregated its schools and programs according to law. In 1966, the DCSS replaced its dual system with a "freedom of choice" plan. Under the freedom of choice plan, a number of black students attended formerly de jure white schools. A majority of black students, however, still attended de jure black schools.[4]

In 1968, the Supreme Court decided *Green v. County School Board*, 391 U.S. 430 (1968). The Court held: " 'Freedom of choice' is not a sacred talisman . . . . [I]f it fails to undo segregation, other means must be used to achieve this end." *Green*, 391 U.S. at 440 (quoting *Bowman v. County School Board*, 382 F.2d 326, 333 (4th Cir. 1967) (Sobeloff, J., concurring)). Within two months, a class of black students ("the plaintiffs") filed this action against the DCSS.

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[3] When describing DeKalb County's overall population, the parties distinguished between "whites" and "non-whites." The parties included non-black minority individuals in the non-white category.

[4] In 1968, the DCSS closed Bruce Street High School, one of two de jure black high schools.

B. History of this Litigation

On June 12, 1969, the district court entered an order that abolished the freedom of choice plan, enjoined the DCSS from discriminating on the basis of race, and required the DCSS to eliminate the vestiges of its dual system. The court further ordered the DCSS to close all remaining de jure black schools and to establish a neighborhood school attendance policy. The district court retained jurisdiction to ensure that the DCSS complied with its order. The DCSS closed all de jure black schools.

The case remained inactive until 1975, when the plaintiffs complained that the DCSS violated the 1969 plan. In 1976, the court ordered the DCSS to modify its M-to-M program by providing students with free transportation and to reassign faculty and staff matters to approximate system-wide racial percentages. Additionally, the district court created the bi-racial committee referred to earlier in this opinion.

Between 1977 and 1979, the DCSS filed three motions in the district court, seeking approval of several plan modifications. In 1977, the district court approved a boundary line change for Flat Shoals Elementary School. In 1978, the district court refused to exclude kindergarten and special education programs from the M-to-M program. In 1979, the district court refused to modify the M-to-M program by restricting black student transfers to schools with black populations less than the system average.

In 1983, the plaintiffs returned to the district court contending, in part, that the DCSS improperly limited M-to-M transfers to predominately white Lakeside High School and that the DCSS's proposed expansion of predominantly white Redan High School would perpetuate segregation. The district court ordered the DCSS to accept additional black students in the M-to-M program at Lakeside High. The district court ruled, however, that the DCSS did not maintain a discriminatory "intent"

in deciding to expand Redan High. The district court concluded that the DCSS achieved unitary status. The plaintiffs appealed. In 1985, this court reversed and remanded the case. *Pitts I*, 755 F.2d 1423 (11th Cir. 1985). The *Pitts I* court first held that the district court improperly declared that the DCSS achieved unitary status without notifying the plaintiffs and conducting a hearing. *Pitts I*, 775 F.2d at 1426 (citing *United States v. Texas Education Agency*, 647 F.2d 504, 509 (5th Cir. Unit A 1981), *cert. denied*, 454 U.S. 1143 (1982); *Lee v. Macon County Board of Education*, 584 F.2d 78, 81 (5th Cir. 1978); *Youngblood v. Board of Public Instruction*, 448 F.2d 770, 771 (5th Cir. 1971)). The court then held that the district court erred by considering the DCSS's intent when it analyzed the Redan expansion. The court stated that the DCSS possessed "an affirmative duty to solve the Redan High School overcrowding problem in such a way that it furthers desegregation and helps eliminate the effects of the previous dual school system." *Pitts I*, 755 F.2d at 1427.

On January 16, 1986, the DCSS filed a motion in the district court seeking final dismissal. In July, 1987, the district court conducted a three-week trial to determine whether the DCSS had achieved unitary status. In October, 1987, the plaintiffs filed two motions for supplemental relief based, in part, on testimony adduced at trial.

On June 30, 1988, the district court entered an order denying the DCSS's motion for dismissal. The district court ruled that the DCSS would not achieve unitary status until it filed a report that presented a plan sufficient to meet the dictates of *Singleton v. Jackson Municipal Separate School District*, 419 F.2d 1211 (5th Cir. 1969) (in banc) (requiring racial equality in the assignment of teachers and principals), *rev'd per curiam on other grounds*, 396 U.S. 290, *cert. denied*, 396 U.S. 1032

(1970).[5] The district court ruled that the DCSS would comply with *Singleton* when all schools possessed minority staffs within 15-percent of the system average. The court also ordered the DCSS to equally distribute its experienced teachers and teachers with advanced degrees and to equalize expenditures among black and white students. The district court refused, however, to impose additional duties on the DCSS in the areas of student assignment, transportation, and extracurricular activities. The court denied the plaintiffs' motion that asked the court to require the DCSS to file a separate junior high school plan.

On July 13, 1988, the plaintiffs filed a motion asking the district court to reconsider its decision not to impose additional duties on the DCSS in the area of student assignment. The plaintiffs also asked the court to reconsider its decision not to require the DCSS to file a junior high school plan. On August 11, 1988, the district court denied the plaintiffs' reconsideration motion.

On September 9, 1988, the district court certified "any issue" of its June 30, 1988 order for interlocutory appeal pursuant to 28 U.S.C.A. § 1292(b) (West Supp. 1989). Both parties appealed. On October 21, 1988, this court permitted the appeals to proceed.[6]

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[5] In Bonner v. City of Prichard, 661 F.2d 1206 (11th Cir. 1981) (in banc), the Eleventh Circuit adopted all Fifth Circuit decisions rendered before October 1, 1981, as binding precedent.

[6] The parties filed identical appeals, asserting that 28 U.S.C.A. § 1292(a) (West Supp. 1989) provided an appeal by right. After this court permitted the section 1292(b) appeals to proceed, the parties moved to consolidate the appeals. The court assigned Case No. 88-8775 to the section 1292(b) appeals and No. 88-8687 to the section 1292(a) appeals. Because we accepted jurisdiction pursuant to section 1292(b), we need not determine whether the parties properly appealed pursuant to section 1292(a).

III. CONTENTIONS OF THE PARTIES

The plaintiffs contend that the district court erroneously dismissed the DCSS from court supervision in the area of student assignment. The plaintiffs also contend that the district court erred by concluding that the DCSS could satisfy *Singleton* while allowing minority faculties to deviate by 15-percent from the system average.

The DCSS contends that it will achieve unitary status when it complies with *Singleton*. The DCSS also contends that it satisfied its duties relating to student assignment when it complied with the district court's 1969 order and closed all de jure black schools. The DCSS takes the position that it did not "cause" resegregation and that it possesses no duty to take affirmative action to desegregate. The DCSS further contends that the district court erred by ruling that it failed to equally distribute educational resources.

IV. ISSUE

Whether the DCSS will achieve unitary status when it complies with the district court's orders regarding faculty and staff assignment and resource distribution.

V. DISCUSSION

A. Standard of Review

We review the district court's specific remedial orders regarding faculty and staff assignment and resource distribution for an abuse of discretion. *Lee v. Anniston City School System*, 737 F.2d 952, 955 (11th Cir. 1984). "A declaration that a school has achieved unitary status is . . . subject to review under the clearly erroneous standard." *Jacksonville Branch, NAACP v. Duval County School Board*, No. 88-3803, slip op. 4282, 4289 n.3 (11th Cir. Sept. 15, 1989); *United States v. Texas Educ. Agency*, 647 F.2d 504, 506 (5th Cir. Unit A 1981), *cert. denied*, 454 U.S. 1143 (1982).

B. Achieving Unitary Status

In *Brown v. Board of Education*, 347 U.S. 483, 495 (1954) (*"Brown I"*), the Supreme Court pronounced "that in the field of public education the doctrine of 'separate but equal' has no place. . . . [S]uch segregation is a denial of the equal protection of the laws." One year later, the Supreme Court ruled that federal courts could assert equity jurisdiction to assure that school boards carried out the dictates of *Brown I*. *Brown v. Board of Education*, 349 U.S. 294, 300-01 (1955) (*"Brown II"*). As the Court stated in *Green v. County School Board*, 391 U.S. 430, 437-38 (1968):

> *Brown II* was a call for the dismantling of well-entrenched dual systems tempered by an awareness that complex and multifaceted problems would arise which would require time and flexibility for successful resolution. School boards . . . [were] clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch.

District courts should not abdicate jurisdiction until a school board achieves "unitary status." *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 31 (1971); *Pitts I*, 755 F.2d at 1426.

1. Defining Unitary Status

A school system achieves unitary status when it no longer discriminates between school children on the basis of race. *Georgia State Conference of Branches of NAACP v. Georgia*, 775 F.2d 1403, 1414 (11th Cir. 1985) (*"Georgia NAACP"*); *Pitts I*, 755 F.2d at 1426; *Lee v. Macon County Board of Education*, 584 F.2d 78, 81 (5th Cir. 1978). A school system "no longer discriminates between school children on the basis of race" when it affirmatively eliminates *all* vestiges of its dual system. *Columbus Board of Education v. Penick*, 443

U.S. 449, 458 (1979) (school board under "continuous constitutional obligation to disestablish its dual school system"); *Swann*, 402 U.S. at 15 ("the objective today remains to eliminate from the public schools all vestiges of state-imposed segregation"); *Green*, 391 U.S. at 437-38 (school board charged with affirmative duty to eliminate racial discrimination "root and branch"). *See Georgia NAACP*, 775 F.2d at 1413 n.12 (school system achieves unitary status when it eliminates vestiges of prior discrimination and operates a non-segregated system for a period of several years).[7] The district court erred by concluding that "there is no binding precedent in this circuit which articulates a precise definition for "unitary status and by following the non-binding definition of unitary status in *Brown v. Board of Education*, 671 F.Supp. 1290 (D. Kan. 1987) (*"Brown III"*). *Pitts v. Freeman*, No. 11946 at 3 (N.D. Ga. June 30, 1988).

2. Applying the Definition of Unitary Status

Appellate courts have provided district courts with little guidance regarding how to determine whether a school system has achieved unitary status. *See* Note, *Eliminating the Continuing Effects of the Violation: Compensatory Education as a Remedy for Unlawful School Segregation*, 97 Yale L.J. 1173, 1190 (1988) (no guidelines exist for determining when school systems achieve unitary status); Note, *Allocating the Burden of Proof After a Finding of Unitariness in School Desegregation Litigation*, 100 Harv. L.Rev. 653, 662 (1987) ("The Supreme Court has not, however, announced any set list of the conditions a district court judge must observe in a formerly dual school system before declaring that it is unitary."). The district court considered six

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[7] The *Georgia NAACP* court set forth separate definitions for a "unitary school system" and for "unitary status." We reject this labeling system. Instead, we use the word "unitary" only when referring to the status that a school board must achieve to be freed from district court jurisdiction.

factors set forth in *Green*: student assignment, faculty, staff, transportation, extracurricular activities, and facilities.[8] *Green*, 391 U.S. at 435. A review of these six factors constitutes the best approach for determining whether a school system has eliminated the vestiges of a dual system. Therefore, we hold that district courts should review the six *Green* factors to determine whether a school system has achieved unitary status. If the school system fulfills all six factors *at the same time* for several years, the court should declare that the school system has achieved unitary status. If the school system fails to fulfill all six factors at the same time for several years, the district court should retain jurisdiction.[9]

Before applying the *Green* factors to the DCSS, we make three related conclusions.

First, the *Green* factors are not entirely synonymous with the vestiges of past discrimination. State-imposed segregation affected society much more than any set of judicially-created factors can measure. As Chief Justice Warren stated in *Brown I*:

> To separate [children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.

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[8] The district court also considered a seventh factor: "quality of education." We conclude that the *Green* Court intended quality of education to be considered in conjunction with each of its six enumerated factors. *See Green*, 319 U.S. at 435 (describing the six factors as comprising "every facet of school operations"). In this case, the district court should consider the distribution of educational resources in relation to the area in which the school system applies the resource.

[9] By holding that the system must fulfill the *Green* factors "for several years," we mean a period of not less than three years. *See* Youngblood v. Board of Public Instruction, 448 F.2d 770, 771 (5th Cir. 1971).

Brown I, 347 U.S. at 494. An analysis of the *Green* factors simply provides a method for determining whether a school system has eliminated all vestiges of past discrimination while, at the same time, providing district courts with a degree of certainty. Application of the *Green* factors does not strip a district court of its responsibility and ability to consider unique circumstances in each school system. *See Keyes v. School District No. 1*, 413 U.S. 189, 224 n.10 (1973) (Powell, J., concurring in part and dissenting in part) (cautioning courts to refrain from formulating "hard-and-fast rules" in school desegregation cases). The *Green* factors approach is a means towards an end. By requiring its use, we simply recognize that district courts cannot consistently apply a standardless test.

Second, our ruling that school boards must comply with the six *Green* factors simultaneously does not expand federal court equity jurisdiction beyond the scope of a school board's constitutional violation. *See Milliken v. Bradley*, 433 U.S. 267, 280-82 (1977) (*"Milliken II"*). School boards violated the Constitution by operating dual systems. To remedy this violation, they must eliminate *all* of the dual system's vestiges. Because these vestiges encompass more than the *Green* factors, a district court can order relief relating to *any* factor until a school system achieves unitary status. The factors operate, in part, as an indicator of more intangible vestiges. Our conclusion is fully consistent with the Supreme Court's statement that: "[t]he district judge or school authorities should make every effort to achieve the greatest possible degree of actual desegregation, taking into account the practicalities of the situation. A district court may and should consider the use of all available techniques . . . ." *Davis v. Board of School Commissioners*, 402 U.S. 33, 37 (1970) (citing *Swann*, 402 U.S. at 22-31).

Third, we reject the First Circuit's ruling which permits school systems to achieve unitary status incremen-

tally. *Morgan v. Nucci*, 831 F.2d 313 (1st Cir. 1987). *Cf. United States v. Overton*, 834 F.2d 1171, 1176 n.17 (5th Cir. 1987) (citing *Morgan* when discussing a post-unitary school system); *Lee v. Macon County Board of Education*, 681 F. Supp. 730, 738 (N.D. Ala. 1988) (praising *Morgan*, but recognizing that it does not constitute Eleventh Circuit law). A school system achieves unitary status or it does not. We will not permit resegregation in a school system that has not eliminated all vestiges of a dual system. *See Dayton Board of Education v. Brinkman*, 443 U.S. 526, 538 (1979) (school boards possess affirmative responsibility to see that pupil assignment, school construction, and abandonment practices do not reestablish the dual school system); *Columbus Board of Education*, 443 U.S. at 460 (district court must ensure that school board actions "do not serve to perpetuate or reestablish the dual school system"); *Swann*, 402 U.S. at 21 (school systems may not perpetuate or reestablish dual system; "district courts should retain jurisdiction to assure that these responsibilities are carried out").

The DCSS asserts that Supreme Court authority permits it to achieve unitary status incrementally. Contrary to the DCSS's assertion, *Pasadena City Board of Education v. Spangler*, 427 U.S. 424 (1976) does not support an incremental approach to school desegregation cases. In *Spangler*, the Court simply refused to approve the Pasadena School Board's rigid requirement that no minority comprise a majority of any school population. *Spangler*, 427 U.S. at 432 ("All that is now before us are the questions of whether the District Court was correct in denying relief when petitioners in 1974 sought to modify the 'no majority' requirement as then interpreted by the District Court."). *See* Note, 97 Yale L.J. at 1191 n.104 (criticizing *Morgan* court for "wrongly citing [*Spangler*] for proposition that a district court may confer unitary status on pupil assignments even if

other facets of the school system retain discriminatory vestiges").

C. Applying the *Green* Factors

1. Transportation, Extracurricular Activities, and Facilities

The district court concluded that the DCSS fulfilled its constitutional duties in the areas of transportation, extracurricular activities, and facilities. Neither party appeals these rulings; therefore, those rulings are not before us.[10]

2. Faculty and Staff

The former Fifth Circuit held that "principals, teachers, teacher-aides and other staff who work directly with children at school shall be so assigned that in no case will the racial composition of a staff indicate that a school is intended for Negro students or white students." *Singleton*, 419 F.2d at 1217-18. School systems, therefore, maintain legal responsibility for the allocation of minority faculty and staff. School systems and district courts must focus on minority ratios in *each* school. *Singleton*, 419 F.2d at 1218. The district court concluded that the DCSS failed to comply with *Singleton*. Specifically, the district court ruled that the DCSS would not satisfy *Singleton* until each school's minority staff ratio varied from the system average by no more than 15-percent. The court adopted this 15-percent guideline from its 1976 order.

Only the plaintiffs appeal the district court's *Singleton* ruling. The plaintiffs argue that the district court erred by permitting a 15-percent variance in each school. The plaintiffs cite two cases in which courts approved plans that permitted deviations of less than 10-percent.

[10] These matters may be considered the next time the district court considers whether the DCSS has achieved unitary status.

See Tasby v. Estes, 517 F.2d 92 (5th Cir.), *cert. denied*, 423 U.S. 939 (1975); *Smith v. Concordia Parish School Board*, 445 F.2d 285 (5th Cir. 1971). The DCSS, however, argues that a 15-percent deviance rule does not constitute error. The DCSS points to a non-binding case in which a court approved a 15-percent deviance in some of a system's schools. *See United States v. Texas Education Agency*, 679 F.2d 1104 (5th Cir. 1982).

We hold that the district court's *Singleton* order did not constitute an abuse of discretion. Our holding does not establish 15-percent as the standard for all cases; we merely find no abuse of discretion on the facts of this case. Accordingly, we affirm the district court's decision permitting the DCSS to comply with *Singleton* when each school's minority staff varies from the system average by no more than 15-percent. We stress, however, that under this circuit's definition of unitary status, the DCSS must simultaneously comply with *Singleton* and the other *Green* factors for several years before it will achieve unitary status.

3. Student Assignment

In recent years, the DCSS student population has become increasingly segregated. The district court, however, refused to hold the DCSS responsible for this segregation because "no evidence [exists] that the school system's previous unconstitutional conduct may have contributed to this segregation." *Pitts v. Freeman*, No. 11946 at 25.

The plaintiffs argue that the DCSS never achieved a constitutionally-sufficient level of desegregation. The plaintiffs argue that until the DCSS achieves unitary status, it must affirmatively move toward the maximum practical level of desegregation. The plaintiffs also argue that demographic shifts do not excuse the DCSS's resegregation.

The DCSS argues that it fulfilled its duties in the area of student assignment when it closed all de jure black schools following the district court's 1969 order. The DCSS argues that the district court properly refused to find it responsible for segregation caused by demographic changes.

We hold that a school system that has not achieved unitary status must take affirmative steps to gain and maintain a desegregated student population. The DCSS may not shirk its constitutional duties by pointing to demographic shifts occurring prior to unitary status.[11] Accordingly, we reverse the district court's conclusion that the DCSS fulfilled its constitutional obligations in the area of student assignment.

a. Closing De Jure Black Schools

The DCSS has a continuing constitutional duty to achieve the greatest possible degree of desegregation and to prevent re-segregation. *Columbus Board of Education*, 443 U.S. at 460 (school board cannot "perpetuate or reestablish the dual school system"); *Davis*, 402 U.S. at 37 ("make every effort to achieve the greatest possible degree of actual desegregation"); *Green*, 391 U.S. at 440 ("continuing duty to take whatever action might be necessary"). The district court must continue to impose this duty on the DCSS until it removes *all* vestiges of the dual system.

The DCSS asserts that the district court could not hold it responsible for segregation not "caused" by its dual system. The DCSS cites *Milliken II*, 433 U.S. at 282 to support this assertion. We reject the DCSS's reading of *Milliken II*. The *Milliken II* Court did not require causation between each *Green* factor and a dual system. Rather, the *Milliken II* Court stated that "fed-

[11] Segregated housing patterns are not new to the South. Certainly, lower federal courts have been aware of housing patterns since the 1954 *Brown* decision.

eral-court decrees must directly address and relate to the constitutional violation itself. . . . [F]ederal-court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate the Constitution or that does not flow from such a violation . . . ." *Milliken II*, 433 U.S. at 281-82. As we stated earlier, the DCSS violated the Constitution by operating a dual system. Under *Milliken II*, federal court orders may address *all* vestiges of that system. Student segregation, prior to achieving unitary status, indicates that vestiges remain. Therefore, the DCSS must continue to work toward desegregation until it removes all vestiges. The fact that the DCSS achieved racial parity in the area of student assignment on the day it closed the de jure black schools does not demonstrate that it fulfilled its duties to achieve maximum possible desegregation and to avoid the reestablishment of a dual system.

b. Demographic Changes

We also reject the district court's refusal to require the DCSS to eradicate segregation caused by demographic changes. As the former Fifth Circuit stated in *Lee v. Macon County Board of Education*, 616 F.2d 805, 810 (5th Cir. 1980):

> Not until all vestiges of the dual system are eradicated can demographic changes constitute legal cause for racial imbalance in the schools. . . . Notwithstanding the school authorities' apparent good faith attempt to desegregate in 1970, the system has never achieved unitary status. . . . Consequently, the school board in Tuscaloosa is still under an affirmative duty to dismantle the dual system, regardless of current housing patterns. (Citing *Flax v. Potts*, 464 F.2d 865, 868-69 (5th Cir.), *cert. denied*, 409 U.S. 1007 (1972)).

We rejected a similar "demographics" argument in *Pitts I*. In *Pitts I*, the DCSS planned to accommodate

white population growth in the Redan High School area by building an additional facility. The district court accepted the DCSS's plan, finding that the DCSS simply planned to build a school where students lived and that a discriminatory intent did not motivate the DCSS's actions. We noted the discriminatory effect of the proposed Redan expansion and held that "[u]ntil the DeKalb County School System achieves unitary status, it has an affirmative duty to eliminate the effects of its prior unconstitutional conduct." *Pitts I*, 755 F.2d at 1426. We repeat what we said in *Pitts I*: The DCSS has not achieved unitary status; consequently, its affirmative duty remains in force.[12]

c. Racial Quotas Are Not Required

In concluding that the DCSS failed to fulfill its constitutional duties regarding student assignment, we recognize that the Constitution does not require "any particular degree of racial balance or mixing." *Swann*, 402 U.S. at 24. *See Milliken II*, 433 U.S. at 280 n.14; *Spangler*, 427 U.S. at 434.[13] Accordingly, we do not require

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[12] *See* Note, Unitary School Systems and Underlying Vestiges of State-Imposed Segregation, 87 Colum. L. Rev. 794, 808-09 (1987) (suggesting that residential segregation may itself be a vestige of a dual system and stating that "residential segregation as a vestige of unconstitutional school segregation may become the last barrier to widespread declarations of unitariness"). *See also Swann*, 402 U.S. at 20-21 ("People gravitate toward school facilities just as schools are located in response to the needs of people. The location of schools may thus influence the patterns of residential development of a metropolitan area and have important impact on the composition of inner-city neighborhoods.").

[13] This principle further undercuts the DCSS's argument that it fulfilled its duty to desegregate when it closed the de jure black schools. Just as the plaintiffs cannot base a claim of segregation on any particular degree of racial balance, the DCSS cannot support a claim of desegregation with racial percentages. "Substance, not semantics, must govern" school desegregation cases. *Swann*, 402 U.S. at 27.

the DCSS to impose racial quotas in its schools. We do require, however, that the DCSS move *toward* the maximum possible level of desegregation. In direct conflict with Supreme Court authority and orders of this court, the DCSS claims no responsibility for student segregation based on its 1969 action of closing de jure black schools. The district court must increase its involvement in this case to ensure compliance with our order and the Constitution. The district court should require the DCSS to submit timely plans, establish firm deadlines, and require progress reports.

d. The Junior High School Plan

The district court denied the plaintiffs' motion to compel the DCSS to file a junior high school plan because it concluded that the DCSS achieved maximum practical desegregation before the 1986-87 school year. Because we reverse the district court's conclusion that the DCSS achieved maximum practical desegregation, we order the district court to reconsider the plaintiffs' motion.

D. Distribution of Educational Resources

The district court ordered the DCSS to assign experienced teachers and teachers with advanced degrees equally between primarily black and primarily white schools. The district court also ordered the DCSS to equalize per pupil expenditures. The DCSS appeals this portion of the district court order, arguing that the district court improperly assigned it the burden of proof.[14]

To the extent that the district court required the DCSS to allocate educational resources in a race-neutral fashion,

[14] The DCSS's burden of proof argument rests on the notion that they did not "cause" the resource inequity. We rejected this argument when we discussed student assignment. The DCSS "caused" all vestiges of the dual system by operating that system. Until the DCSS achieves unitary status it must continue to work toward eliminating *all* vestiges of the dual system.

we affirm. We note, however, that the district court based its conclusion on an improper premise: that the DCSS may properly operate a segregated school system prior to reaching unitary status.[15] Under our holding, the DCSS must desegregate its students. When the system desegregates, most schools will no longer be racially identifiable and the DCSS will be unable to distribute resources in a racially imbalanced fashion.

E. Disposition

For many years, the DCSS planned, contributed to, and directly caused racial segregation in its schools. By operating a dual system, the DCSS affected the "hearts and minds" of its students and may have contributed to the housing patterns that today "cause" school segregation. *Swann*, 402 U.S. at 20-21; *Brown I*, 347 U.S. at 494. The law requires that the DCSS achieve unitary status. The DCSS, however, refuses to take affirmative action and seeks to justify its inaction with frivolous and long-rejected arguments.

To comply with our mandate, the DCSS's actions "may be administratively awkward, inconvenient, and even bizarre in some situations and may impose burdens on some." *Swann*, 402 U.S. at 28. The DCSS must consider pairing and clustering of schools, drastic gerrymandering of school zones, and grade reorganization. *See Swann*, 402 U.S. at 27-28. The DCSS and the district court must consider busing—regardless of whether the plaintiffs support such a proposal. The DCSS's neighborhood plan is not inviolable. *See Davis*, 402 U.S. at 28. The

[15] We are not faced with the question of whether a school system may constitutionally operate a system that is in fact segregated after the system has achieved unitary status, or whether "the spirit of *Brown*" would provide a cause of action for a new set of plaintiffs. *See Pitts I*, 755 F.2d at 1426 (district court may consider discriminatory intent only after a school system achieves full unitary status).

DCSS's M-to-M program and magnet program do not alone suffice to desegregate the schools. We note that the M-to-M program is not likely to desegregate white schools. Without extensive expansion, the magnet school programs are not likely to materially desegregate the system.[16]

After twenty years of court supervision, the DCSS continues to operate racially identifiable schools. The DCSS has never achieved unitary status and it retains the duty to eliminate all vestiges of the dual school system.

IV. CONCLUSION

We hold that a school system does not achieve unitary status until it maintains at least three years of racial equality in six categories: student assignment, faculty, staff, transportation, extracurricular activities, and facilities. The DCSS has not achieved unitary status. We affirm the district court's conclusion that the DCSS failed to fulfill its duties in the areas of faculty and staff. We reverse the district court's conclusion that the DCSS fulfilled its duties in the area of student assignment. Accordingly, we order the district court to require the DCSS to prepare and file a plan in accordance with this opinion in the shortest reasonable time.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

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[16] The magnet programs are voluntary and part-time, attracting less than 1-percent of the system's students.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil No. 11946

WILLIE EUGENE PITTS, *et al.*

versus

ROBERT FREEMAN, *et al.*

ORDER

[Filed June 30, 1988]

The DeKalb County School System (DCSS) was historically segregated by law. "Dual" school systems were maintained in the County, one for black students and another for white students. In 1954, the Supreme Court's landmark decision in *Brown v. Board of Education*, 347 U.S. 483 (1954), signaled the end of dual systems with its pronouncement that "in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." *Id.* at 495. The Supreme Court's decision imposed upon all school systems, which were maintaining dual systems at that time, the duty to dismantle the dual system, avoid the reestablishment of the dual system, eliminate the vestiges of the dual system and replace the dual system with a system in which all students, regardless of their race, are provided the same educational opportunities.

In 1968, the plaintiffs, certain black school children in Dekalb County and their parents, filed this class action on behalf of all black school children in Dekalb County claiming that the defendants had operated a racially segregated school system in violation of the United States Constitution. After this action was filed, the DCSS voluntarily undertook to work with the Department of Health, Education and Welfare (HEW), to develop a final and terminal plan of desegregation. In June, 1969, the court entered a consent order which approved the proposed plan and enjoined the defendants from discriminating on the basis of race in operating the DCSS. The court maintained jurisdiction over the case to implement its order. In the two decades that this case has been pending, the court has rarely been asked to intervene.[1] Both parties have worked together in the best interest of the school system.

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[1] There was no significant action in this case until September, 1975. At that time, plaintiffs sought to have the DCSS declared out of compliance with the 1969 order. Plaintiffs challenged the M-to-M program, assignment of staff, and changes in attendance zones. In 1976, the court entered an order requiring the DCSS to modify the M-to-M program to provide free transportation, to reassign faculty and staff to approximate the system-wide percentages, and created a Bi-racial Committee to oversee future boundary line changes, the M-to-M program, etc.

In 1977, the DCSS requested the court to approve a boundary line change for Flat Shoals Elementary School. After a hearing, the court held that the school's plan met constitutional standards and approved it.

In 1978, the DCSS filed a motion asking that kindergarten and special education programs be excluded from the M-to-M program. The court denied the motion.

In 1979, the DCSS, at the Bi-racial Committee's request, moved the court to amend its 1976 order to modify the M-to-M program, such that the only schools that would be eligible to receive transferring blacks would be those schools whose black populations did not exceed the system-wide percentage of black students. The Bi-racial Committee had suggested that such a limitation might help stop white flight from transitional schools and neighborhoods. The court denied modification of the order, finding that the transition of the southern schools was caused by the changing complexion of the neighborhoods, rather than the effect of the M-to-M program.

In 1983, the plaintiffs sought supplemental relief. Plaintiffs alleged that the DCSS had conspired to limit M-to-M transfers to Lakeside High School, that Knollwood Elementary School had been improperly expanded, and that Redan High School was also improperly increased. Plaintiffs later dropped their claim as it concerned Knollwood Elementary School. Separate hearings were held on the Lakeside and Redan issues. With regard to the Lakeside High School issue, the court ruled against the defendants. The court held for the defendants on the Redan issue. Although the court's first order on the Redan issue was reversed by the Eleventh Circuit, the order issued by this court following remand also held for the defendants. The parties did not appeal that order.

On January 16, 1986, the defendants filed a motion for final dismissal. The defendants seek a declaration that the DCSS has achieved unitary status. When a federal court maintains jurisdiction over a school desegregation case, the school system must show that it is unitary before it can be dismissed from court supervision. *Green v. County School Board*, 391 U.S. 430, 439 (1968).

The meaning of unitary status has not been clearly defined by the Supreme Court. As there is no binding precedent in this circuit which articulates a precise definition for the term,[2] this court will use the definition

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[2] In Georgia State Conference of Branches of the NAACP v. Georgia, 775 F.2d 1403, 1413 n. 12 (11th Cir. 1985), the court noted "[s]ome confusion has been generated by the failure to adequately distinguish the definition of a "unitary" school system from that of a school district which has achieved "unitary status . . . . [A] unitary school system is one which has not operated segregated schools as proscribed by cases such as *Swann* and *Green* for a period of several years. A school system which has achieved unitary status is one that is not only unitary but has eliminated the vestiges of its prior discriminaiton and been adjudicated as such through the proper judicial procedures. Unfortunately, the terminology used to refer to these concepts is not universal."

espoused by Judge Rogers in *Brown v. Board of Education* (Brown III), 671 F. Supp. 1290, 1292-93 (D. Kan. 1987), to determine whether the defendants have met their burden of proof. The following principles for determining unitary status were set forth in that case. First, "the nature of the desegregation remedy is to be determined by the nature and scope of the constitutional violation. *Milliken v. Bradley*, 433 U.S. 267, 280 (1977). No one plan can achieve unitary status in all school districts.

The court also must be mindful that it is only segregation caused by the intentional segregative acts of the defendants that comprise the constitutional violation in this case. "De facto segregation (segregation caused by private choice) and segregation caused by authorities other than those sued in this case, are not part of the constitutional violation. . . ." *Brown III*, 671 F. Supp. at 1292 (citing *Keyes v. School District Number 1*, 413 U.S. 189 (1973); *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971)).

Because separate but equal schools violate the Constitution, the racial mix of students in a school is an important factor. The Court has emphasized on many occasions that while racial mix is important, racial balancing is not required. *E.g. Swann v. Board of Education*, 402 U.S. 1, 24 (1971). Even the existence of a small number of one race or virtually one race schools is not necessarily violative of the Constitution. *Id.* at 26.

In *Brown III*, Judge Rogers further recognized that "[s]egregative motive or the absence of such intent is relevant but not controlling in determining unitariness. 'The measure of the post-Brown I conduct of a school board under an unsatisfied duty to liquidate a dual system is the effectiveness, not the purpose, of the actions in decreasing or increasing the segregation caused by the dual system.' *Dayton II*, 443 U.S. at 538." *Brown III*, 671 F. Supp. at 1293.

In the *Brown III* opinion, Judge Rogers summarized by stating that a school system that has obtained unitary status is "one in which the characteristics of the 1954 dual system either do not exist or, if they exist, are not the result of past or present intentional segregative conduct of the defendants or their predecessors." *Id.* This court finds the definition of unitary status articulated by Judge Rogers to be the clearest and most serviceable definition of that term espoused by any court. It combines all of the essential requirements from the Supreme Court opinions with a workable standard for a court to apply to the facts of a given case.

In *Green*, the Court delineated six pertinent areas that courts should examine in deciding whether a school system has met its burden of abolishing the former dual system. These areas include: student assignment, faculty, staff, transportation, extracurricular activities and facilities. The parties have requested that this court review one other area, quality of education, when determining if these defendants have met their burden of proof regarding whether the DCSS is now a unitary system. The court agrees that quality of education should properly be addressed.

The court held a hearing on the motion for final dismissal (or declaration of unitary status) on July 6-22, 1987. On November 22, 1987, after the parties had submitted their post-trial briefs and proposed findings of fact and conclusions of law, the court heard closing arguments on this motion. Earlier, plaintiffs filed motions for supplemental relief and to compel the DCSS to file a junior high plan. The court deferred ruling on those motions until it addressed the motion for final dismissal. All three motions are now ripe for decision.

STUDENT ASSIGNMENT

Much of the evidence submitted during the hearing on the motion for unitary status properly concerned student assignment. Indeed, the separation of the races is the

primary indicator of a de jure segregated school system. Plaintiffs accurately stated this court's duty, with regard to this issue, in their proposed findings of fact and conclusions of law at pages 54-55. Plaintiffs stated "[t]he court's task, in reviewing Defendants' progress in these areas, is to determine whether the remedies implemented by the Defendants have been effective in dismantling the old dual system. If they have, then the system should be declared unitary; if they have not, then further relief must be ordered so that the duty to desegregate is fully and finally discharged. *Davis v. East Baton Rouge Parish School Board*, 721 F.2d 1425, 1434 (5th Cir. 1983); *Lee v. Macon County Board of Education*, 616 F.2d 805, 808-09 (5th Cir. 1980). See also *Swann v. Charlotte-Mecklenbery Board of Education*, 402 U.S. 1 (1971)."

DEFENDANTS' CONTENTIONS

The DCSS' position in this motion for unitary status is that it fulfilled its duty regarding student assignment in the 1969-70 school year when it closed the remaining de jure black schools and reassigned all students to their neighborhood schools under a bona fide neighborhood attendance plan. The DCSS argues that this action placed all students in the attendance zones they would have occupied in the absence of the constitutional violation. Although the DCSS concedes that the school system has undergone some resegregation since the implementation of the plan and the filing of the instant motion, the DCSS contends that shifting demographic factors and other factors beyond the DCSS' control caused this resegregation and that the DCSS is not legally responsible.

PLAINTIFFS' CONTENTIONS

Plaintiffs contend that the DCSS has the continuing duty to combat all resegregation until this court declares that the DCSS has achieved unitary status. Their goal was to produce evidence showing that the implementation of the 1969 order did not eradicate all of the vestiges

of the prior dual system, and that the DCSS missed opportunities to fulfill its affirmative duty to eradicate all of the vestiges of the former dual system.

To support their argument that the implementation of the 1969 order did not desegregate the DCSS, plaintiffs asked the court to examine the resegregation that has occurred in the DCSS. Plaintiffs improperly place great emphasis on the concept of racial balance[3]. Plaintiffs point to these 1986-87 school year statistics: (1) 47% of the students attending the DCSS are black; (2) 50% of the black students attended schools that were over 90% black; (3) 62% of all black students attended schools that had more than 20% more blacks than the system-wide average; (4) 27% of white[4] students attended schools that were more than 90% white; (5) 59% of the white students attended schools that had more than 20% more whites than the system-wide average; (6) of the 22 DeKalb County high schools, five have student populations that are more than 90% black, while five other schools have student populations that are more than 80% white; and (7) of the 74 elementary schools in the DCSS, 18 are over 90% black, while 10 are over 90% white.

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[3] In *Swann*, the Court emphasized that racial balance is not the test of an unitary system.

> If we were to read the holding of the District Court to require, as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved. . . . The constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole.

Swann, 402 U.S. at 24.

[4] For purposes of this order all white and minority students other than blacks will be referred to as whites. There was no evidence presented that at the time this action was instigated that non-black minority students composed even one percent of the student population of the DCSS. Thus, 94.4% of the students attending the DCSS in 1969-70 school year were white.

Plaintiffs also contend that the DCSS missed opportunities to fulfill its duty regarding student assignments. Plaintiffs' primary evidence in this regard was the testimony of Dr. Robert Dentler[5] about the DCSS' failure to take advantage of certain desegregative tools: (1) the DCSS did not subdistrict, that is, the DCSS did not break this large county into subdistricts and racially balance all of the subdistricts; (2) the DCSS did not expend sufficient funds to target minority learning opportunities; (3) the DCSS did not put in place community advisory mechanisms bearing on equalization of treatment, other than the bi-racial committee that was established by the court; (4) the DCSS could have modified the old "freedom of choice" plan to use it for desegregative purposes; (5) the DCSS could have clustered schools, placing children at different grade levels in different schools; thus, establishing a feeder pattern; (6) the DCSS could have used magnet schools earlier than DCSS chose to use them; and (7) the DCSS could have used urban to suburban exchanges of students. (Transcript Vol. IX at 43-47)

While the DCSS had an affirmative duty to eradicate the vestiges of the former dual system during this period, it is undisputed that plaintiffs did not seek court intervention to require the DCSS to implement any of the desegregative tools described above. In fact, plaintiffs did not seek further judicial intervention in this case until 1975, long after plaintiffs claim that other desegregative tools should have been utilized by the DCSS. Even then, the plaintiffs did not seek implementation of the changes that they now seek.

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[5] Dr. Dentler was qualified as an expert in the areas of student assignment, educational administration, staff desegregation, program development and evaluation, specifically in the areas of desegregation, demographics, human relations and transportation. (Transcript Vol. IX at 12-13)

DISCUSSION

Prior to the 1966-67 school year, the DCSS maintained dual attendance zones for both blacks and whites. Beginning with the 1966-67 school year, DCSS replaced the dual zones with a system of geographic zones with a "freedom of choice" transfer plan. While this plan resulted in a number of black students attending de jure white schools, the system had no significant impact on the former de jure black schools. The majority of black students still attended the de jure black schools. While neutral on its face, the "freedom of choice" plan did not dismantle the dual systems. In *Green v. County School Board*, 391 U.S. 430 (1968), the Supreme Court held that "in desegregating a dual system a plan utilizing 'freedom of choice' is not an end in itself. . . . Rather than further the dismantling of the dual system, the plan has operated simply to burden children and their parents with a responsibility which *Brown II* placed squarely on the School Board." *Id.* at 440-42.

Within two months of the Supreme Court's decision in *Green*, the plaintiffs filed this action. By order of June 12, 1969, the consent desegregation plan for DCSS was implemented. That order was designed to be a final and terminal plan for desegregation. The order abolished the "freedom of choice" plan and implemented a single neighborhood school attendance policy. All of the remaining de jure black schools from the previous dual system were closed. In 1969, the school population of DeKalb County consisted of 74,741 students of which 3,754, or 5.6% were black.

Plaintiffs concede that "the closing of the black schools in 1969 did, for a time, result in the desegregation of the schools of DeKalb County. . . ." (Plaintiffs' trial brief at 7) The court agrees with plaintiffs' concession. Plaintiffs further contend that the DCSS has become resegregated and that the defendants are responsible for that segregation. While the court agrees that the DCSS has

become largely resegregated since the 1969-70 school year, the court does not find that the defendants are legally responsible for the resegregation.

Plaintiffs concede that the racial segregation in DeKalb County is the result of demographic shifts. In fact, plaintiffs' leading expert, Dr. Dentler, testified that "there were profound changes taking place demographically [from 1969 until 1986 in DeKalb County]." (Transcript Vol. IX at 38) Plaintiffs' correctly contend that not "until all vestiges of the dual system are eradicated can demographic changes constitute legal cause for racial imbalance in the schools." *Lee v. Macon County Board of Education*, 616 F.2d 805, 810 (5th Cir. 1980) (citing *Flax v. Potts*, 464 F.2d 865 (5th Cir.), *cert. denied*, 409 U.S. 1007 (1972)). Plaintiffs seemingly further contend, however, that until the school system is declared unitary, not all vestiges of the former dual system will be eradicated. Such a contention, of course, is erroneous. It is axiomatic that all vestiges of a dual system must be eradicated at a point in time before the school system is declared to have unitary status or the school system must be declared to have achieved maximum possible desegregation.

It is clear that the simple act of implementing a constitutionally accepted plan does not make a school system desegregated. *United States v. Texas Education Agency*, 647 U.S. 504 (5th Cir. 1981) (Unit A), *cert. denied sub nom., South Park Independent School District v. United States*, 454 U.S. 1143 (1982) (citing *Henry v. Clarksdale Separate School District*, 579 F.2d 916, 921 (5th Cir. 1978)); *see Thompson v. Madison County Board of Education*, 496 F.2d 682 (5th Cir. 1974). At points in their briefs, the defendants seemingly make the argument that such an implementation does relieve the school system of its affirmative obligations. To the extent that the defendants arguments can be read as supporting this contention, the court rejects their arguments. This court is mindful of the Fifth Circuit's guidance in *Lemon v. Bossier Parish School Board*, 444 F.2d 1400 (5th Cir. 1971), that "'[o]ne swallow does not make a spring.'"

The court will now examine the evidence presented at trial concerning the vestiges of the former dual system after the desegregation order was implemented in this case. When the June, 1969 order was initiated, all children were assigned to their neighborhood school. As the court noted above, plaintiffs concede that this action effectively desegregated the DCSS for a period of time. The evidence that plaintiffs presented at the hearing which tends to show that the implementation of the June, 1969 order did not effectively desegregate all of the schools for a time period was presented by Roger Mills. Mr. Mills has been involved with this case in several different capacities. His initial involvement was as a named plaintiff in 1974, he subsequently became involved as co-counsel, and later served as a member of the bi-racial committee. He testified that "there were two schools that were majority black despite the implementation of the court order. The first school was Terry Mill Elementary School which was 76 percent black, and the second school was Stoneview Elementary which was 51 percent black." (Transcript Vol. VII at 190)

The court will accept the witness' contentions regarding these schools, because plaintiffs' exhibit number 95, which contained the same information, was admitted into evidence. The court notes, however, that plaintiffs did not show that Mr. Mills had a basis for personal knowledge of the school system during the 1969-70 school year. Mr. Mills did not enter this case until 1974, and he testified that he moved into DeKalb County on January 1, 1974. (Transcript Vol. VII at 188).

The court has some concern that two of the formerly de jure white schools were majority black at the time the desegregation plan for DeKalb County was implemented.

The court views one race schools in the DCSS, both now and then, with suspicion. "The existence of a small number of one race, or virtually one-race, schools [however] within a district is not in and of itself the mark of a system that still practices segregation by law." *Swann*, 402 U.S. at 26. The court was presented with no evidence that these schools are a vestige of the dual system. The evidence presented at the hearing showed that demographic shifts in the Atlanta Metropolitan Area began in the 1950s. In the 1950s, the population of DeKalb County was basically white; but as more and more blacks moved into the Atlanta Metropolitan Area, the rapidly growing black population began to move into the southwest DeKalb County area. The area surrounding Terry Mill School was one of the first areas to be effected by a rapid shift in the minority population.

Dr. David Armour testified about why Terry Mill was a majority black school at the time the desegregation plan was implemented in DeKalb County. Dr. Armour is an expert in the areas of the educational and social effects of desegregation plans, including academic achievement; the effects of demographics on school enrollment trends; the evaluation of alternative desegregation plans; the causes of residential segregation; assignment of faculty and staff in school desegregation plans; research methods and survey methods; and statistical analysis of data. Armour testified that in 1966 Terry Mill had only two black students, and 590 white students. By 1967, due to the population shifts of black residents from the City of Atlanta into DeKalb County, 23% or 140 out of 613 students at the school were black. In 1968, when the plan was adopted, the percentage of blacks and whites was equal. By 1969, when the plan was implemented, the percentage of black students at the school was 76%. (Transcript Vol. V at 120-21)

There was no evidence presented that the former dual system in any way contributed to the rapid racial transition of that school. Nor was there evidence that a formerly de jure black school was located within that area. Terry Mill was, of course, a formerly de jure white school. For these reasons, the court cannot find that the prior unconstitutional acts of the defendants were responsible for the high percentage of minority students in Terry Mill School in 1969.

The court is not as concerned with the racial imbalance in 1969 in the Stoneview Elementary School. The racial mix at that school was practically 50-50. There was only one percent more black students in the school than white students. That mix represents perhaps the ideal racial integration situation. Practically equal numbers of black and white children attended school together. The court notes that, unlike the majority of the County, this area has been characterized as a stable integrated area since the inception of the integration plan. The racial mix of the same school in the 1986-87 school year, according to plaintiffs' evidence, was 53% black.

There was insufficient evidence presented to this court from which it can make a determination, as defendants urge, that the implementation of the 1969 order resulted in full eradication of the vestiges of the dual system that would entitle them to a declaration of unitary status on this issue. While the court is satisfied that the two majority black schools that were in place when the order took effect in the 1969-70 school year are not vestiges of defendants' prior unconstitutional conduct, there was insufficient evidence presented about how long the school system remained relatively desegregated before demographic changes had the effect of resegregating certain schools. There is considerable evidence that the defendants actions in 1969 resulted in elimination of most of the vestiges of segregation. The achievement of unitary status in the area of student assignment cannot be hedged on the attainment of such status for a brief moment. For this reason, the court finds it necessary to examine the actions of the DCSS over the last two decades.

HISTORY OF THE DEMOGRAPHIC CHANGES IN DEKALB COUNTY

A true understanding of the problems and successes of the DCSS cannot be found without an examination of the demographic changes experienced by DeKalb County in the period between 1969 and 1986. DeKalb County has experienced phenomenal growth since 1950. In 1950, the County's population was a mere 77,000. By 1985, the population was in excess of 450,000.

In 1970, there were 7,615 non-whites[6] living in the northern part of DeKalb County and 11,508 non-whites living in the southern part of the county. By 1980, there were 15,365 non-whites living in the northern part of DeKalb County and 87,583 non-whites living in the southern portion. Between 1975 and 1980, approximately 64,000 black citizens moved into southern DeKalb County, most moving from the City of Atlanta. Meanwhile, approximately 37,000 white residents moved from southern DeKalb County to surrounding counties, mostly Gwinnett County. While there was some growth of the white population in southern DeKalb County from 1950 until 1975, in northern DeKalb County, the number of whites grew tremendously during that period.

As the result of these demographic shifts, the population of the northern half of DeKalb County is now predominantly white and the southern half of DeKalb County is predominantly black. Evidence presented at the hearing indicates that racially stable neighborhoods are not likely because whites prefer a racial mix of 80% white and 20% black, while blacks prefer a racial 50%-50% mix. (Transcript Vol. V at 53) The demographic shifts have also had an immense effect on the racial compositions of the DeKalb County schools. From the period of 1976-1986, at the elementary level, the DCSS experienced an

[6] In this context, the evidence presented to the court distinguished between whites and non-whites, that is, minority students including non-blacks.

enrollement decline of 15%, and within this change, an increase in black student enrollments of 86%. At the high school level, during the same period, DCSS experienced an enrollment decline of 16%, while the number of black students rose by 119%.

STEPS TAKEN BY THE DCSS TO COMBAT DEMOGRAPHIC CHANGES

Since 1976, a bi-racial committee, appointed by the court, has reviewed all proposed boundary line changes, all proposed school openings and closings, and the M-to-M program. Since the implementation of court-ordered desegregation in this case, there have been approximately 170 boundary line changes. Dr. William Clark, an expert in the areas of urban geography, demographic processes, statistics methodology, housing patterns and survey analysis, testified that the boundary line changes had no significant impact on the school populations, given the tremendous demographic shifts that were taking place at the same time. He opined that if no boundary lines had been changed, the shifting demographics still would have resulted in a significant increase in black population in many schools, especially those located in the southwest DeKalb area. Although the defendants' evidence showed that three boundary changes had at least a partial segregative effect, Dr. Clark testified, and this court finds, that even if a boundary change might have had a short-term effect on segregation, in the long run these boundary changes did not have a significant impact on the racial mix of the school populations. (Transcript Vol. I at 73-74)

To combat the shifting demographics, the DCSS voluntarily implemented a Minority-to-Majority program[7] in the 1972 school year. Using approximate numbers, 4,500

[7] The M-to-M transfer policy allows a student to transfer from a school in which his race was in the majority to one in which his race was in the minority.

students of the 72,500 enrolled in the DCSS in the school year 1986-87 participated in that program. Participation has grown steadily in the program over the last decade at the rate of about 500 students per year. (Transcript Vol. V at 61) Dr. Armour testified that the impact of the M-to-M students goes far beyond the number of students transferring under the program. He testified that at the receiving school approximately two white students for every black student is exposed to an integrated learning experience. (Transcript Vol. V at 61-62) Thus, approximately 19% of the students attending the DCSS had an integrated learning experience as a result of this program.

In the 1980s, the DCSS also instigated a magnet school program in schools located in the middle of the County. The location of these programs in the middle of the County is of critical importance for desegregative purposes. As was discussed above, the southern half of the County is predominately black, while the northern half of the County is predominately white. Only special academic programs located in schools in the middle of this rather large county have much potential for attracting both black and white students.

The magnet school programs in effect at the time of the hearing include: a performing arts program at Avondale High School; the Scientific Tools and Techniques program at Fernbank Science Center; a science program for gifted and talented elementary children at Snapfinger Elementary School; a foreign language program at Briarcliff High School. At the hearing, Dr. Robert Freeman, Superintendent of the DCSS, testified that the DCSS also had plans to maintain programs at three other schools as magnet programs: the open campus located at Briarcliff; the Occupational Educational Center North; and the Occupational Educational Center Central. The DCSS has two other magnet programs on the drawing board: a school for the gifted and talented at Kittridge Elementary School and a program for four-year-olds at Evansdale Elementary School. The DCSS also operates a number of integrated experience programs: the writing center programs for both fifth and seventh graders that are racially controlled; the driving range school is racially controlled; summer school programs are racially controlled as much as possible; and a racially controlled dialectical speech program was to be implemented in the 1987-88 school year.

HAS THE DCSS ACHIEVED MAXIMUM DESEGREGATION?

The Court has examined the efforts that plaintiffs contend defendants should have taken to achieve unitary status in the area of student assignment, the steps that the DSCC has taken to accomplish their goal, the dynamics of the changing demographics, and the effects of the changing demographics on student attendance. With these factors in mind, the court must decide if the defendants have accomplished maximum practical desegregation of the DCSS or if the DCSS must still do more to fulfill their affirmative constitutional duty.

Most of plaintiffs' efforts to convince this court that defendants must do more to fulfill their constitutional duty centered on Dr. Dentler's testimony about what desegregative tools were at the defendants' disposal during the time that the resegregation of the County was taking place. Dr. Dentler summarized his testimony in this manner:

> The [DCSS] is racially imbalanced, it has schools that are extremely isolated racially, that continue to be identifiably black and identifiably white. It has failed to comply even in the broadest interpretation I could make with the single standard on certificated stat [sic]. It does not have a bi-racial committee which engaged [sic] in advising and guiding on desegregated strategies and race relations. It has an

> M-to-M program which has done about as much as it can do, which is very little, to desegregate the system. It has the barest bones beginnings of magnet programs, affecting in my count about 500 students at present, and there are some good ideas going, but they have a very long way to go, and they are in shortfall right now.
>
> So even on my briefest list, this district is segregated and has not offset the vestiges of discrimination as they impact on the child's daily learning experience, and that's the essence of the school treatment. It's not a unitary district, and its got some exciting good intentions which I have tried to note and honor, but . . . they don't bear on this assessment.

(Transcript Vol. IX at 123-24)

To rebut this evidence, the defendants presented the testimony of Dr. Christine Rossell, an expert in the areas of evaluation of alternative desegregation plans, the design and implementation of desegregation plans, the effect of desegregation plans on learning, the effect of desegregation plans on demographics and statistical analysis of data. When asked whether she agreed with Dr. Dentler that the DCSS did not properly respond to the population shifts occurring during the 1970s and 1980s, Dr. Rossell testified:

> I am sure that [the DCSS] could have done something to make marginal adjustments, but these trends are so massive that [the DCSS] could only have had a marginal effect. The basic trend was racial transition, blacks moving from Atlanta into DeKalb County, and . . . there is nothing that would have changed that basic factor.

(Transcript Vol. XI at 85) When asked whether magnet schools would have worked in the mid-1970s, the period of time when Dr. Dentler advocates that such programs should have been started in the DCSS, Dr. Rossell testified that all studies available at that time, concerning the effectiveness of magnet programs, indicated that magnet programs were not very effective. (Transcript Vol. XI at 86-87)

To rebut Dr. Dentler's testimony that the M-to-M Program as implemented in the DCSS is ineffective, Dr. Rossell testified that, in 1987, the M-to-M transfers will reduce "racial imbalance by 18 percentage points if you use the index of dissimilarity comparing blacks to non-blacks, by 20 percentage points if you use the relative exposure index comparing blacks to non-blacks. That is a fairly large reduction in racial imbalance." (Transcript Vol. XI at 87) Dr. Rossell further testified that the magnet programs and integrated learning experience programs implemented by the DCSS have had positive effects on desegregation and racial exposure. (Transcript Vol. XI at 95).

Once again this court is faced with the "battle of the experts." The testimony of the opposing experts in this case is so contradictory that to accept the testimony of plaintiffs' experts necessitates that the court discredit most of the testimony of the defendants' experts, and vice-versa. Faced with this decision, the court finds the evidence presented by the defendants' experts to be more reliable on this issue. The defendants' experts were more familiar with the DCSS. They had spent more time than plaintiffs' experts in the DCSS, learning about the inner workings of the DCSS and its problems and successes, rather than treating the DCSS as a hypothetical situation. The court notes that Dr. Walberg, Dr. Armour, Dr. Rossell and Dr. Clark are leading experts in their respective fields and all have had considerable experience in the desegregation area.

Plaintiffs' desegregation expert, Dr. Dentler, did not base his testimony on an empirical study of the school

system. Due to his lack of personal knowledge of the DCSS, he was forced to treat the DCSS as a hypothetical situation. Based upon data made available by the school system, his testimony centered on the failure of the DCSS to achieve racial balancing. The court found more compelling testimony about what is being and can be done to improve the quality of education for all students and achieve maximum practical desegregation at the same time.

Based upon the evidence preser d at the hearing, the court finds that the DCSS has done everything that was reasonable under the circumstances to achieve maximum practical desegregation in DeKalb County. Plaintiffs request the court to go back in time and ask the question "what if the defendants had tried this then?" That time has passed. While there may be some case authority for approaching desegregation cases in that manner, this court will not dwell on what might have been, but what else should be done now. "At any time, more could have been done to achieve racial balance in the schools. But, it begs the issue of this case to argue that racial balancing must be done today because it was not done yesterday." *Brown III*, 671 F. Supp. at 1309.

Although the defendants might have been able to do something more to maintain desegregation while the dramatic population shifts were occurring, the court, based on the evidence presented at the hearing and the court's long involvement [8] in this case, finds that defendants' actions achieved maximum practical desegregation from 1969 to 1986. The rapid population shifts in DeKalb County were not caused by any action on the part of the DCSS. These demographic shifts were inevitable as the result of suburbanization, that is, work opportunities arising in DeKalb County as well as the City of Atlanta,

[8] The undersigned was assigned to this case on January 8, 1981, approximately twelve years after its filing. Prior to that time, Judge Newell Edenfield supervised this case.

which attracted blacks to DeKalb; the decline in the number of children born to white families during this period while the number of children born to black families did not decrease; blockbusting of formerly white neighborhoods leading to selling and buying of real estate in the DeKalb area on a highly dynamic basis; and the completion of Interstate 20, which made access from DeKalb County into the City of Atlanta much easier. (Transcript Vol. IX at 33) There is no evidence that the school system's previous unconstitutional conduct may have contributed to this segregation. This court is convinced that any further actions taken by defendants, while the actions might have made marginal adjustments in the population trends, would not have offset the factors that were described above and the same racial segregation would have occurred at approximately the same speed.

This court does not dismiss lightly plaintiffs allegations that the defendants could have done more to desegregate the DCSS. "The failure to take desegregative action by a district that had an affirmative duty to desegregate should be carefully examined by the court. If a district has consistently dragged its feet on desegregation then the vestiges of the segregated system may remain." *Brown III*, 671 F. Supp. at 1308. Although the plaintiffs, defendants, and the HEW all consented to the June, 1969 order implementing a race-neutral neighborhood school system, the Court later made it clear in *Swann* and *Green* that such plans would not satisfy the duty to desegregate unless it did effectively desegregate the system. Even though a student assignment plan may be racially neutral, unless the former vestiges have been removed, a race-neutral plan can perpetuate the former dual system.

To reiterate, this court finds that the implementation of the June, 1969 order eradicated most of the vestiges of the former dual system. Defendants' efforts to deseg-

regate this system did not end there, however. When faced wth rapid resegregation of the system, the DCSS implemented both a M-to-M program and a magnet program. Both of these programs were implemented without the prompting of this court or the plaintiffs. Both of these programs have achieved a degree of success in desegregation and racial exposure.

Although defendants did not implement all programs described as permissible in *Swann*, this court cannot find that it neglected its constitutional duty to eradicate the vestiges of the former dual system. The great weight of the evidence indicates that the segregation that occurred in DeKalb County would have taken place at approximately the same speed whether or not defendants had implemented the desegregative tools described by plaintiffs. While racial mixture is a proper goal of a formerly segregated school system, there is no constitutional right for any student to attend a school having any particular degree or racial balance or mixing." *Milliken v. Bradley* (Milliken II), 433 U.S. 267, 280 n. 14 (1977); *Pasadena Board of Education v. Spangler*, 427 U.S. 424, 434 (1976). At this juncture, the court is convinced that, absent massive bussing, which is not considered as a viable option by either the parties or this court, the magnet school program and the M-to-M program, which the defendants voluntarily implemented and to which the defendants obviously are dedicated, are the most effective ways to deal with the effects on student attendance of the residential segregation existing in DeKalb County at this time.

Based upon the dramatic effect the implementation of the June, 1969 order had on eradicating the vestiges of the prior dual system, the DCSS' continuing efforts to battle resegregation by implementation of voluntary M-to-M and magnet school programs, the absence of any persuasive evidence indicating that the actions of the DCSS in any way promoted the resegregation that occurred in the County, and the evidence that indicates

that other efforts by the DCSS would not have effectively stopped or even slowed the rapid demographic changes that brought residential segregation to the County, this court finds that the DCSS has achieved maximum practical desegregation as of the 1986-87 school year. The goal in desegregation cases is to achieve the "greatest possible degree of actual desegregation, taking into account the practicalities of the situation." *United States v. DeSoto Parish School Board*, 574 F.2d 804 (5th Cir. 1974), *cert. denied*, 439 U.S. 982 (1978). The DCSS has become a system in which the characteristics of the 1954 dual system have been eradicated, or if they do exist, are not the result of past or present intentional segregative conduct by defendants or their predecessors. *Brown III*, 671 F. Supp. at 1293.

Plaintiffs argue that further desegregation may be accomplished by, *inter alia*, establishing a magnet school program or grade reorganization plan, such as a comprehensive junior high school plan. The court agrees with plaintiffs contentions in this regard. As the court discussed above, the defendants are obviously dedicated to the magnet program and the court does not find that court supervision is necessary to insure that magnet programs are used to bring about maximum practical desegregation.[9]

The court is concerned that the defendants are not seizing the opportunity of implementing a junior high program to bring about further desegregation, if possible. The parties agreed that in the area of student assignment, the cut-off date for evidence in this area would be the 1986-87 school year. All evidence presented to the

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[9] In the defendant's post-trial brief at page 36, defendants state: "[a]s the court heard, Defendants remain committed to providing all students the opportunity for an integrated education, and will continue to devote significant resources to the M-to-M program, integrated experience programs, and magnet programs with or without court supervision."

court indicates that the DCSS obtained maximum practical desegregation through that cut-off date. Thus, the defendants have fulfilled their constitutional obligations in this area. For that reason, the court denies the motion of plaintiff to compel the defendants to file a junior high plan.

STAFF ASSIGNMENTS

The assignments of both teachers and principals have been challenged in this case as violative of the dictates of *Singleton v. Jackson Municipal Separate School District*, 419 F.2d 1211 (5th Cir. 1969), *cert. denied*, 396 U.S. 1032 (1970). The court will first address the issue as it concerns teachers.

While the DCSS maintained a dual system, only black teachers were hired to teach black students in all-black schools, and only white teachers were hired to teach in the all-white schools. Of course, a segregated faculty is vestige of the former dual system, and all school systems that maintained a dual ystem have the affirmative duty to eradicate this vestige. As long as schools have faculties that are identifiably of one race, it is unlikely that the schools will be able to successfully assimilate students of another race.

Plaintiffs do not contend that the defendants have not fulfilled their constitutional obligation with respect to hiring and retaining minority faculty. The proper gauge of the defendants' conduct in respect to hiring minority teachers is the racial composition of a district's teacher work force as compared to the racial composition of the qualified public school teacher population in the relevant labor market. *Hazelwood School District v. United States*, 433 U.S. 299, 308 (1977); *Fort Bend Independent School District v. City of Stafford*, 651 F.2d 1133, 1137-38 (5th Cir. 1981) (Unit A). Plaintiffs concede that defendants have actively recruited qualified black applicants, and that the result of their efforts has allowed the defendants to hire a significant number of black teachers, even

though the number of black students graduating from colleges in the United States with bachelor degrees in the field of education has declined since 1975 and is still decreasing. While the state-wide average percentage of black teachers within a school system was 21% in 1986, the DCSS percentage was 26.92%. In the last five years, the DCSS has continuously employed a greater percentage of black teachers, than was the state-wide average. The court notes that the DCSS has an equally exemplary record in retention of black teachers.

Plaintiffs do contend, however, that the defendants have not complied with one of *Singleton's* requirements. *Singleton* pronounced three governing principles with respect to faculty employment practices during the desegregation process. Plaintiffs challenge only the first pronouncement, that is, plaintiffs contend that the defendants have failed to follow the requirement that "principals, teachers, teacher-aides and other staff who work directly with children at a school shall be so assigned that in no case will the racial composition of a staff indicate that a school is intended for Negro students or white students." *Id.* at 1217-18.[10] The court agrees that the defendants have not complied with *Singleton* with regard to assignment of minority faculty.

The court notes, that in 1976, while Judge Newell Edenfield supervised this case, the defendants were found to be out of compliance with the first *Singleton* requirement. In his order of November 3, 1976, Judge Eden-

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[10] The other two requirements of *Singleton* follow. *Singleton* prohibits a school system from discriminating in the hiring, assignment, promotion, pay, demotion or dismissal of faculty members and staff. Finally, *Singleton* requires that in school districts in which the process of desegregation effects a reduction in the number of teachers or other professionals employed by the district, the school district must select the staff members to be dismissed or demoted on the basis of valid non-discriminatory reasons. 419 F.2d at 1218.

field made the following findings of fact and conclusions of law on this issue:

> The court finds that the defendants have not taken adequate steps to utilize reassignment of teachers to reduce the racial identifiability of faculty in accordance with the standard set out in *Singleton v. Jackson Municipal Separate School District, supra.* In *Singleton,* the Court of Appeals for the Fifth Circuit held that in order to reduce racial identifiability of a faculty, staff should be assigned so that the ratio of black to white teachers in each school is "substantially the same" as the ratio throughout the entire system. 419 F.2d at 1218.
>
> Defendants ask that the court compare the facts in the instant case with *Ellis v. Board of Public Instruction of Orange County,* 423 F.2d 203, 205 (5th Cir. 1970), where the court found the school system to be in compliance with *Singleton,* despite the existence of racial ratios in individual schools twelve percentage points higher than the racial ratio of the entire school system. While the court is aware of the problems inherent in requiring that the teachers at any school be maintained at an exact arbitrary racial ratio, [cite] the current 40-48% of black teachers in some of the more predominantly black elementary schools does not even "approximate" the 15% system-wide ratio [cite].
>
> A significant reason for the wide disparity in the racial ratios amongst schools in DeKalb County is the reliance on the replacement process, and the avoidance of reassignments to even out the distribution of faculty. The court finds that this system does not comply with the *Singleton* standard, nor with this court's 1969 order which required reassignment of teachers to eliminate the effects of the dual school system. Accordingly, reassignment of

> teachers must be utilized to make the racial ratio of the faculty in individual schools truly substantially similar to the system-wide ratio. [cite]

Order of November 3, 1976 at 15-16.

There was no evidence presented at the hearing that after Judge Edenfield issued the order referenced above that the defendants reassigned their teachers to make the racial ratio of the faculty in individual schools truly substantially similar to the system-wide ratio. All evidence indicates that the DCSS has continuously relied upon the replacement process to achieve *Singleton* requirements and avoided using mandatory reassignment. The result of this policy is that defendants have never satisfied their duty to comply with *Singleton.*

Defendants argue that if the court views the system as a whole they have complied with *Singleton.* Defendants contend that plaintiffs improperly look at particular schools. Defendants obviously misread the requirement of *Singleton* in this regard. The pertinent language from that opinion follows:

> For the remainder of the 1969-70 school year the district shall assign the staff described above so that the ratio of Negro to white teachers *in each school,* and the ratio of other staff *in each,* are substantially the same as each such ratio is to the teachers and other staff, respectively, in the *entire school system.*

419 F.2d at 1218 (emphasis added). The proper focus for both the court and the parties are whether individual schools deviate substantially from the system-wide average.

Plaintiffs presented evidence that in the 1984-85 school year, seven schools deviated more than 10% from the system-wide average of 26.4% minority teachers in the elementary schools and 24.89% minority teachers in the high schools.

School	% Black Students	% Black Faculty	% Deviation
Briarlake Elem	17.1%	14.29%	−12%
Chapel Hill Elem	96.9%	38.89%	+12.5%
Gresham Park Elem	98.2%	39.29%	+13%
Kelley Lake Elem	98.7%	38.46%	+12%
Leslie Steele Elem	99.0%	37.04%	+11%
Wadsworth Elem	95.5%	47.83%	+21.5%
Gordon High	99.4%	39.22%	+14.4%

For the 1985-86 school year, the system-wide percentage teachers rose to 26.7% minority teachers in the elementary schools and 26.36% in the high schools. The evidence shows that the number of schools deviating more than 10% from the system-wide average rose also.

School	% Black Students	% Black Faculty	% Deviation
Briarlake Elem	18.9%	13.79%	−13%
Hightower Elem	18.2%	12.50%	−14%
Kingsley Elem	2.8%	16.67%	−10%
Medlock Elem	34.4%	15.79%	−11%
Chapel Hill Elem	97.5%	41.46%	+15%
Sky Haven Elem	98.0%	39.13%	+12.5%
Leslie Steele Elem	99.2%	39.29%	+12.5%
Wadsworth Elem	96.7%	41.67%	+15%
Gordon High	99.6%	39.58%	+13%
Walker High	99.0%	41.27%	+14.5%

In the 1986-87 school year, the numbers increased again. During that year 15 elementary schools and 2 high schools fell outside the 10% range. Again, the ratio of minority faculty rose, reaching 27.3% in the elementary schools and 25.95% in the high schools.

School	% Black Students	% Black Faculty	% Deviation
Hooper Alex. Elem	94.0%	37.5%	+10.2%
Austin Elem	1.1%	13.33%	−14%
Chapel Hill Elem	98.5%	39.53%	+12%
Gresham Park Elem	98.0%	43.75%	+15.5%
Hightower Elem	30.5%	15.0%	−12%
Kelley Lake Elem	98.8%	46.67%	+19.5%
Kingsley Elem	2.9%	15.38%	−12%
Meadowview Elem	82.4%	42.31%	+15%
Oakcliff Elem	14.9%	17.14%	−10.2%
Sky Haven Elem	97.3%	40.43%	+13%

Smoke Rise Elem	12.9%	13.51%	−14%
Leslie Steele Elem	99.6%	37.93%	+10.5%
Terry Mill Elem	98.4%	47.06%	+20%
Toney Elem	97.7%	38.46%	+11%
Wadsworth Elem	96.8%	40.0%	+13%
Columbia High	98.4%	36.0%	+10.1%
Redan High	33.2%	15.71%	−10.2%

Although the DCSS is not legally responsible for where black and white families chose to live in DeKalb County, the law of this circuit makes it legally responsible for the allocation of minority teachers. Defendant offers two excuses for its failure to achieve perfect *Singleton* compliance. First, defendant argues that competition among local school districts is very stiff and that it is difficult to attract and keep qualified teachers if the DCSS requires that the teachers work far from their homes. The former Fifth Circuit Court of Appeals rejected a similar argument in *United States v. DeSoto Parish School Board*, 574 F.2d 804 (5th Cir.), *cert. denied*, 439 U.S. 982. In *DeSoto*, the court said:

> Pointing to the difficulties DeSoto Parish faces in competing with nearby, wealthier school systems in attracting and keeping qualified teachers, the board asserts that measures such as reassignment to achieve compliance with *Singleton* will lead to large numbers of faculty resignations. The fear of faculty resistance to desegregation measures, like the fear of community resistance, cannot be allowed to defeat an effective desegregation plan in favor of a plan that is unlikely to achieve a unitary system.

Id. at 817. The court is not unsympathetic to the difficulties that the DCSS faces in this regard; however, the law of this circuit requires the DCSS to comply with *Singleton*'s requirements now.

The DCSS maintains a transfer program. Under this program, if a teacher has taught at the same school for a period of three years, the teacher may request a transfer to another school. (Defendants' exhibit 83) The pre-

dominant reason given by both black teachers and white teachers when requesting transfers is that they have a desire to work closer to their residence. This allows the teacher to coordinate classroom activities with community and civic activities and alleviates travel inconvenience. (Transcript Vol. II at 19-22) The court notes that since DeKalb is such a large and densely populated county, the ability to work close to home can save an individual significant daily travel time. While the number of transfer requests received by the County is relatively high, the number of transfer request that are granted is relatively low.[11] Since the teachers' requests are to transfer to schools near their home, however, the transfers that are granted deter the DCSS from achieving its *Singleton* goal.[12]

Plaintiffs further contend that the DCSS' placement of principals violates *Singleton*. Plaintiffs do not contend that the DCSS has failed to fulfill its constitutional obligation concerning the hiring and retention of minority administrators. As in the faculty area, the DCSS has an exemplary record in hiring and maintaining minority professional staff. Blacks now compose 26.5% of the administrative staff of the DCSS. Blacks are represented

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[11] At the high school level in the 1986-87 school year, 79 requests were made. Seventy of the requests were made by white teachers, and 9 by black teachers. Of the 79 requests, 26 were granted, 24 to white teachers and 2 to black teachers. At the elementary level, 103 requests were made, of which 57 were granted, 40 to white teachers and 17 to black teachers.

[12] Defendants argue that they achieved *Singleton* compliance in every school at some point in time over the course of this case; therefore, it has been relieved of its constitutional burden. It would be ludicrous for this court to accept such an argument. Acceptance of compliance with *Singleton* under that argument, would permit situations such as a school system having 20% of its schools in compliance with *Singleton* during a particular year would achieve *Singleton* compliance even though the other substantially deviated from the system-wide ratio, as long as the other 80% eventually complied with *Singleton*.

throughout all levels of the administrative structure of the DCSS.

Plaintiffs' concern about the assignment of principals is that principals are assigned in a manner such that the number of black principals at a school is a strong indication of the black student population of that school. The court must agree.

This court does not consider the evidence of principal assignments in a vacuum, however. In *United States v. South Park Independent School District*, 566 F.2d 1221 (5th Cir. 1978), *cert. denied*, 454 U.S. 1143 (1982), the court briefly considered the allegation of the plaintiff that principals were assigned based upon the race of the individuals involved. The court stated: "We are not ready to hold that each particular level of employment in a school system must have a particular racial composition. At the same time, however, we also recognize that in a community individuals might attach a certain degree of importance to the position of principal, and that it would be unconstitutional for a school district to assign principalships based upon the race of the individuals involved." *Id.* at 1226.

In *Singleton*, the court did not differentiate between teachers or principals, but required that all "staff who work directly with the children at school shall be so assigned that in no case will the racial composition of a staff indicate that a school is intended for Negro students or white students." *Singleton*, 419 F.2d at 1218. The principals and assistant principals are only two of the members of a schools staff that interact on a daily basis with the children. *Singleton* requires that the staff be considered as a whole. When the evidence concerning both teacher and principal deviations are considered, the need for further action by the defendants to comply with *Singleton* becomes obvious.

Construing the evidence presented by the parties concerning the assignments of principalships, the court finds

the majority black schools have a high percentage of black principals assigned to them, while the majority white schools have a deficient percentage of black principals assigned to them. Plaintiffs' evidence focuses on the 1985-86 school year. There was no evidence presented that the 1985-86 school year was an anomaly. Plaintiffs showed that during the 1985-86 school year, five of the 22 high school principals, and 18 of the 74 elementary school principals were black. Of those black principals, four of the five black high school principals were assigned to schools that have student populations of over 95% black. Only one of the five high schools with black student populations over 90% had a white principal.[13] Thirteen of the 18 black elementary school principals were assigned to schools at which the black student population exceeded 90% black. Conversely, only four of the elementary schools with black student populations over 90% had a white principal. (Plaintiffs exhibit 3)

There is also an obvious racial skew in the total number of administrators (principals, assistant principals, lead teachers) at the majority black schools. The court will first examine the elementary schools during the 1985-86 school year. At this time the system-wide average of black administrators at the elementary school level was 30.1%. In the 43 majority white schools the number of black administrators were less that 10%. In the 11 schools in which the black student population ranged between 41% and 80%, the number of black administrators increased to approximately 38.5%. In the 20 schools in which the black student population was greater than 81%, the percentage of black administrators increased to 60%.

At the high school level, the racial skew of administrators was equally as startling. The system-wide average

[13] Gyuri Nemeth, who testified during the July, 1987 hearing, is a white principal at majority black Walker High School (now McNair Senior High).

of black administrators at the high school level was 27.2%. In the 12 schools that were majority white, the percentage of black administrators was only approximately 22%. In the schools that had black student populations ranging from 41% to 80%, the percentage of black administrators was roughly 45%. In the majority black schools with black student populations of over 81%, the percentage of black administrators increased to 63.2%.

The court also analyzed an exhibit presented by defendants which depicted the race and sex of all in-school administrators for the 1987 school year. At the elementary school level, 27 out of the 77 elementary schools had black principals. In the 27 schools in which the principal was black, 60% of the in-school administrators were black. At the high school level, only four of the twenty-nine high schools had black principals. In those four schools, 75% of the in-school administrators were black.

Such obvious deviations between percentage of black administrators in the majority black schools cannot satisfy the *Singleton* requirements. Again the court rejects any contention by the defendants that if a particular school met the *Singleton* requirement at one time, the DCSS is relieved of the *Singleton* requirement as to that school. At a minimum, *Singleton* contemplates an initial reassignment of staff that will achieve a system-wide balance of minority staff and then a neutral maintenance program afterwards.

Defendants complain that this court has not given the DCSS guidance on what acceptable deviation from the system-wide average would comply with the *Singleton* requirement of "substantial compliance." This court has endeavored to be flexible by not setting a certain percentage deviation that will satisfy *Singleton* in this district. The court, however, will comply with the defendants request for guidance by establishing an iron-clad rule. This court will adopt as this rule the previous guid-

ance established by Judge Edenfield in the November 3, 1976 order. When the school staffs (faculty and administrators) of all schools vary from the system-wide minority staff average by no more than 15%, the DCSS will have obtained substantially compliance with *Singleton*. Any school that deviates by more than 15% will presumptively be a violation of *Singleton*. Absent extenuating circumstances justifying deviations of more than 15%, the court will not find *Singleton* compliance until all school staffs fall within the established parameters. At trial, the defendants did not offer an explanation for the existing substantial deviations.

This court will maintain jurisdiction over this case at least through September, 1988. Before that time period ends, the DCSS will have the option of implementing a plan that will achieve compliance with *Singleton* and submitting a report showing that they have so complied to the court. Due to the late date of this order, if compliance with *Singleton* within that short period of time will be unduly burdensome on the DCSS, the DCSS may file a report with this court in September, 1989 showing that it has achieved compliance with *Singleton*. It would appear that such compliance will necessitate reassignment of both teachers and principals.

While this court shares the concern of other courts of requiring strict mathematical ratios, as the former Fifth Circuit recognized in *DeSoto*, such ratios are necessary "as a starting point in eliminating the vestiges of segregation in . . . faculty assignment. . . . Moreover, *Singleton* does not require that such ratios be maintained permanently; rather, it 'contemplates an initial reassignment so that the racial ratio at every school reflects the system-wide ratio, followed by the utilization of a nondiscriminatory hiring, firing, and assignment policy thereafter.'" *DeSoto*, 574 F.2d at 819 (quoting *United States v. Wilcox County Board of Education*, 494 F.2d 575, 580 (5th Cir.), *cert. denied*, 419 U.S. 1031 (1974)). Achieving compliance with *Singleton* should not be difficult for the DCSS in the area of faculty assignment. In their brief, the defendants argue that any "school's faculty could be brought into line with a narrowly construed racial balance standard by moving, at most, two or three teachers." (Defendants' post trial brief at 50)

PHYSICAL FACILITIES, TRANSPORTATION, & EXTRA-CURRICULAR ACTIVITIES

The defendants achievement of unitary status in the areas of physical facilities, transportation and extracurricular activities were not contested by the plaintiffs. The court agrees with plaintiffs' concession that the defendants have fulfilled their constitutional obligations in these areas and that no further relief is required.

Although the parties have stipulated that some clubs meet at certain receiving schools of the M-to-M program before the M-to-M buses arrive in the morning, plaintiffs do not contend that further relief is needed in the areas of transportation and extracurricular activities. It appears that this problem was brought to the courts attention to alert the court that the DCSS does not have a perfect record in the area of transportation and extracurricular activities. Transportation must be provided for M-to-M students. The activity buses provided by the DCSS are more than adequate to provide all students with an opportunity to participate in extracurricular activities. The time for the club meetings are set by the students not the DCSS. The DCSS provides activity buses late into the night, and will provide bus service for only one student, if necessary. The court finds that the DCSS provides opportunities to all students, including M-to-M students, to participate in a wide range of extracurricular activities without regard to race.

The plaintiffs also have some concern about overcrowding in the southern schools. Plaintiffs claim that portable classrooms are used more in the majority black schools

than the majority white schools. All evidence at the hearing on this motion, indicated that the DCSS has a race-neutral policy with regard to the use of portable classrooms. The DCSS is constantly attempting to deal with the growing population of southern DeKalb County by building new schools and adding permanent additions to existing schools.

QUALITY OF EDUCATION

The court considers this area of dispute to be of utmost importance. The crux of the Supreme Court's decision in *Brown* was that the maintenance of separate but equal facilities for black students did not assure that black children obtained a quality education. Although quality of education is not one of the six classic areas of inquiry in school desegregation cases[14], the defendants did not protest litigation of this area. The defendants acknowledge that a school system that is not fulfilling its obligation of providing quality education to all school children should not be entitled to unitary status.

The parties contest who should bear the burden of proof on this issue. As the defendants concede that this area of inquiry is important to a determination of whether the DCSS has achieved unitary status, the court finds that defendants should properly bear the burden of showing that all students in the DCSS are receiving a quality education.

Plaintiffs concede that the DCSS is a wonderfully innovative system.[15] (Transcript Vol. I at 101) Plaintiffs

[14] Plaintiffs contend that quality of education can be considered a part of the facilities area, one of the six areas specified in *Green* as a proper area of inquiry for the purposes of deciding if a school system has obtained unitary status. The court finds that the labelling of the dispute concerning quality of education is irrelevant.

[15] The court was impressed by the number of innovative programs implemented by the DCSS. Examples of these innovative programs include: (1) effective schools program (a program initiated in 12 majority black schools to focus the resources of the school system on schools that will benefit most significantly); (2) parenting programs (providing parents with techniques and methodologies to help their children achieve in school); (3) lead teacher for student services (lead teachers work with individual students to improve their self-concept; they work with teachers to develop alternative strategies for working with children of various backgrounds; and they work with parents to help them facilitate the education of their children); (4) human relation supplements (a program instigated in the receiving schools of the M-to-M program, the goal of the program is to improve race relations); (5) homework helpline (provides immediate help for students and parents who are encountering difficulties in the completion of homework); (6) adopt-a-school (designed to use the resources of businesses to enhance education by encouraging companies to adopt a school and become its benefactor); (7) staff development programs; (8) latchkey program (in conjunction with the local YMCA, the DCSS provides a program for parents who cannot afford private day care services); (9) remedial education programs (e.g., a partially state-funded program for students in grades 2-5, who are half a year or more below grade level in reading); and (10) the writing-to-read program.

contend, however, that defendants have racially skewed the provision of certain education resources, such that black students are not given an equal educational opportunity in the DCSS. In particular, plaintiffs argue these tangible factors have been skewed: (1) teachers with advanced degrees; (2) more experienced teachers; (3) per pupil expenditure; (4) number of library books per student; and (5) that there is higher teacher turnover in the black schools. Plaintiffs seemingly argue that a prima facie showing that these resources are skewed is sufficient for the court to find that the DCSS has not achieved unitary status. Defendants, however, focus on the effect such factors have had on educational gains by black students. It is the defendants contention that the black students in the DCSS have made greater advances educationally than white students. The parties difference of opinion on what factors influence quality of education make it difficult for the court to compare the voluminous data presented on this issue. In effect, the parties com-

pare apples and oranges and ask this court to decide which is better.

Both the allocation of educational resources and the achievement of students are interrelated issues that must be examined to determine whether black students are receiving the same quality education as white students. The court will first examine the evidence presented by the defendants concerning achievement of black students in the DCSS.

The focus of the DCSS evidence on this issue was that it offered the same educational opportunities to all students. The DCSS presented extensive evidence about the uniformity of its curriculum in all schools. The DCSS requires teachers to prepare lesson plans that conform to the curriculum. (Transcript Vol. VI at 85-91) Defendants' expert Dr. Walberg spent a considerable amount of time in the DCSS examining the curriculum and the conformity of the various schools to the curriculum. Based upon his examination of the DCSS, Dr. Walberg testified that "the District provides an exceptionally effective educational program. It provides a uniform curriculum, and it provides equality of educational opportunity in the schools. The District . . . provides continuous progress mastery learning. I think this is an exceptionally effective program. They do this by aligning the curriculum and the tests, by concentrating very heavily on academic learning. They use curriculum guides. They have in my opinion very careful lesson plans and extraordinary attention to the match of the total district curriculum to what the lesson plans are in fact. In most cases, although there are some exceptions to this, the teachers actually have those lesson plans in their classes and they are teaching them pretty much on task." (Transcript Vol. IV at 91) [16]

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[16] Plaintiffs attempted to prove that the curriculum of the predominately black schools was not the same as the predominately white schools by presenting the evidence of a M-to-M student, Norma Denise Jones, who testified that another transfer student did very poorly while he attended Lakeside High School through the M-to-M program, but when he transferred back to his home school he did very well. Defendants successfully rebutted this testimony with the testimony of Melvin Johnson, the assistant superintendent for area one (an area in southern DeKalb County). Mr. Johnson testified that the transcript of the student in question showed that the students grades were substantially the same at both the M-to-M receiving school and the students' home school. (Transcript Vol. XI at 25-27)

The court found particularly significant the evidence that black students who have been in the DCSS for two years achieve greater gains than white students on the Iowa Tests of Basic Skills (ITBS). The DCSS compared students who entered the DCSS in 1985 and took the ITBS for the first time in the 1985 school year then took the ITBS when it was administered in 1987. Although whites scored higher than blacks on the test, the percentage gain of black students was significantly greater than white students. The students who were selected for the comparison were 546 white students and 778 black students. In 1985, the average score for white students was 73.3%, while their score increased to 80.5% in 1987, a difference of 7.2%. For black students, the average score for the 1985 exam was 40.8% and their score increased to an average score of 51.2% in 1987, a difference of 10.4%. The fact that blacks score lower than whites cannot be attributed in any way to the DCSS. These students all entered the DCSS in 1985. The black students entering the schools system scored lower than entering white students. The progress of the black students and the white students can be attributed to the DCSS. It is significant to this court that black students, many of whom attend majority black schools made greater gains on this test than the white students, many of whom attended majority white schools. (Defendants' exhibit 114).

The latest results from the ITBS that were available before the hearing establish that both black and white students who have been totally educated in the DCSS score higher on the ITBS than students who entered the DCSS in the year of the test. Again black students score lower on the ITBS as a group than white students. (Defendants' exhibit 115)

Black students in the DCSS also are more successful than other black students nationally on the Scholastic Aptitude Test (a college entrance examination test), while white students in the DCSS scored below the national average. The information on the SAT presented to the court was for the 1984-85 school year. (Defendants' exhibit 119)

The evidence presented to this court shows that the socio-economic status of a child affects his potential for academic success to a much greater extent than racial exposure. In fact, much of the evidence presented to this court showed that racial exposure did not effect a child's academic success. There was considerable testimony on that subject. (testimony of Walberg in unnumbered volume of the transcript at 40-62, and testimony of Dr. Rossell in Vol. XI at 99-100) The court found the evidence presented in this regard to be compelling.

Several of the defendants' exhibits illustrated this point as well. Defendants' exhibit 137 shows that black children entering kindergarten score much lower on the California Achievement Test than white students. Of course, only the child's home environment, including socio-economic factors, could bear on a child's achievement at that point in a child's academic development.

Both black and white students who are participants in the free and reduced lunch program score lower on the ITBS than students who are not on the free and reduced lunch program. (Defendants' exhibit 117) The type dwelling in which a child lives is predictive of scores on

the ITBS. Children living in single family dwellings score highest, followed by children who live in condominiums, duplexes, apartments, mobile homes, while children who live in institutions have the lowest scores. The exhibit further showed that a greater percentage of white students than black students live in single family dwellings and condominiums. (Defendants' exhibit 112)

Defendants' exhibit 110 shows that students who come from professional homes (that is, a home in which at least one parent is a professional) score highest on the ITBS. These students are followed by children from two-parent homes. The lowest achievers are from single-parent households. A much higher percentage of black children come from single-parent homes than white children.

The court will now consider the evidence presented by plaintiffs that certain of the resources of the DCSS are racially skewed. Plaintiffs presented evidence on these school treatment characteristics: (1) per pupil expenditure, (2) library books per student, (3) teacher experience; (4) teacher education; (5) teacher turnover; and (6) student retentions. Plaintiffs divided the schools into three different types for purposes of showing a comparison of the resources: (1) type I schools—schools that have been majority white over the last decade; 2) type II schools—schools that have undergone a racial transition from majority white to majority black over the last decade; and (3) type III schools—schools that have been majority black over the last decade. Plaintiffs then analyzed the data to determine if the differences were statistically significant. Under plaintiffs analysis, differences were considered statistically significant when there was less than a 5% probability that the pattern of data is happening by chance alone. (Transcript Vol. VIII at 12)

The plaintiffs presented the following data on teacher experience:

Average Number of Years Teaching

	Fall 1984	Fall 1985	Fall 1986
ELEMENTARY SCHOOLS			
Type I	9.55	10.22	9.79
Type II	6.45	6.90	6.36
Type III	5.24	5.46	5.19
HIGH SCHOOLS			
Type I	7.99	8.74	8.90
Type II	6.83	7.14	7.08
Type III	5.34	5.68	4.91

(Plaintiffs exhibits 97(a), (b) and c; 98(a), (b) and (c))

Using plaintiffs analysis, at the elementary level during both 1984 and 1985, all three types were statistically significant. In 1986, Type I differed significantly from Types II and III. At the high school level, Type I differed significantly from Type III for all three years.

With regard to graduate degrees held by the DCSS faculty during the 1986-87 school year, plaintiffs presented the following evidence:

Percentage of Teachers Having Graduate Degrees

	ELEMENTARY SCHOOLS	HIGH SCHOOLS
Type I	75.76	76.05
Type II	61.84	64.34
Type III	52.63	64.32

(Plaintiffs' exhibit 86 at 13-14, exhibits 99 and 100) At the elementary level, all three types are statistically significant from each other. At the high school level, Type I differed significantly from Types II and III.

The court is, of course, concerned by the differences between teacher experience and teachers with graduate degrees in the different "type" schools. The defendants concede that there are differences and both attempt to explain the differences away and argue that the differences should not matter because they do not affect a student's potential for academic success. While the court

does not find convincing the plaintiffs evidence that such skews affect students' learning potential, the court finds that any school system should consciously make efforts to assure that resources are distributed equally to all students. This includes insuring that all students are taught by well-educated, experienced teachers. A previous dual system has an additional burden of assuring that any school predominately attended by minority students is given the same, if not superior, resources. All evidence submitted by the defendants shows that, due to socio-economic factors, a black student's potential for academic success is less than a white student's potential; thus, making their need for "resources" greater.

Whether a racial skew of resources affects a child's learning potential is irrelevant to this court. Even before the Supreme Court's decision in *Brown*, the law required that minority students be given the same resources as white students. Accordingly, when the defendants revise their assignments of teachers and principals to meet the requirements of *Singleton*, they shall make the assignments in a manner that will equalize the experience and education of faculty and staff among the different "types" of schools.

The plaintiffs presented evidence and the defendants concede that the degree of teacher turnover is higher in the Type II and III schools than in the Type I schools. (Plaintiffs exhibits 101 and 102) Defendants presented evidence that steps are being taken to control the teacher turnover in the majority black schools. The DCSS has instigated a program in the majority black Columbia, Gordon, and Walker High Schools that requires teachers to teach only four classes per day as opposed to five. This program led to a tremendous decrease in the turnover of teachers at these schools. (Transcript Vol. I at 177-78, Vol. V at 183).

The court applauds the efforts of the DCSS to maintain its experienced teachers. The DCSS, like any other

school system, cannot control how many of its employees chose to leave the system to teach elsewhere or pursue other opportunities. For that reason, the court will not impose an obligation on the DCSS to slow teacher turnover in its majority black schools. The DCSS is obviously interested in this objective and will take all necessary steps without this court's intervention.

Plaintiffs also contend that the number of books per pupil in the DCSS is racially skewed among the "types" of schools. While there is a difference between the number of books in the "types" of schools, the court found the defendants explanation for this difference satisfactory. Several factors effect the number of library books in a particular school's library: (1) how often weeding (the removal of out-dated or duplicative material) occurs; (2) the shift of enrollment of a school (in the northern "type I" schools, population has decreased, while the southern "type II and type III" schools populations have increased); (3) how media resources are allocated by the media specialists of the different schools; and (4) the number of "lost" books at a particular school.

Defendants presented the testimony of Frank C. Winstead, the Director of Educational Media for the DCSS, and Helen Ruffin, the Library Media Specialist at Sky Haven Elementary school, a majority black elementary school. (Transcript Vol. X at 175-200) The testimony of these witnesses convinced the court that any skew of library books is a result of the four factors listed above and was not the result of purposeful conduct by the defendants. The court also does not find that the number of books in a library is indicative of the quality of the media materials available at the schools. There was insufficient evidence presented to this court to convince it that black students are in any way handicapped academically by the number of books per pupil in their school libraries.

Plaintiffs presented evidence that black students are not as academically successful on the California Achievement Test, have higher elementary failure rates, and are more often retained (not promoted) than white students. The defendants evidence showed the same results. Plaintiffs argue that their evidence proves that children assigned to majority black schools are denied equal educational opportunity. The court cannot accept this contention.

The parties do not dispute that black students, both in the DCSS and elsewhere, are not as successful generally in academics as white students. As the court discussed above, the court finds that socio-economic differences between the two groups influences academic success. The DCSS would not be acting in the best interest of black students by promoting them to a higher grade, until they have achieved a level of academic success that justifies the promotion.

Plaintiffs' arguments in this regard seem to hedge on the language of the June, 1969 order that required the DCSS to implement remedial educational programs for students attending or who have previously attended segregated schools to overcome past inadequacies in their education. (Order of June, 1969 at 11). It is undisputed that at the time of the unitary hearing, there were no children attending the DCSS who formerly attended a de jure black school before the implementation of the 1969 order. That order referred only to de jure segregated schools.

While there will always be something more that the DCSS can do to improve the chances for black students to achieve academic success, the court cannot find, as plaintiffs urge, that the DCSS has been negligent in its duties to implement programs to assist black students. The DCSS is a very innovative school system. It has implemented a number of programs to enrich the lives and enhance the academic potential of all students, both blacks and whites. Many remedial programs are targeted in the majority black schools. Programs have been implemented to involve the parents and offset negative

socio-economic factors.[17] If the DCSS has failed in any way in this regard, it is not because the school system has been negligent in its duties. Indeed, Dr. Edward Bouie, Sr., Associate Superintendent for Program Development and Staff Assessment, testified that the DCSS has implemented a total management system designed to focus on the achievement of children. He further testified that Dr. Freeman, the Superintendent of the DCSS, has instructed him that any program that can be found to improve student achievement, should be researched, piloted, and placed in the DCSS. (Transcript Vol. III at 41) The DCSS spends in excess of $12,500,000 of exclusively local funds on supplementary instructional personnel, such as contingency teachers, instructional lead teachers, lead teachers for student services, and remedial reading specialists. (Transcript Vol. III at 183-88) The court does not find that further court supervision is necessary to insure that the DCSS implements remedial programs to facilitate the potential for academic success by black students.

The last resource differential that the plaintiffs brought to this court's attention is that per pupil expenditures are higher in the Type I schools than in the Type II and III schools. This differential is of great concern to the court. In the 1984-85 school year, the expenditure per student in type I schools was $2,833, type II schools was $2,540, and type III schools was $2,492. Certain factors such as lower enrollment in the type I schools explains some of the difference in expenditures. While there was no compelling evidence presented that the amount of money expended per student results in a greater potential for academic achievement, this court is puzzled by the DCSS' practice of allocating what appears to be a larger percentage of its financial resources in the type I schools, when all evidence indicates that the needs of the type II and III schools are more significant. The DCSS shall endeavor to equalize spending among the three types of schools.

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[17] See footnote 15, supra.

The defendants argue that this court cannot properly order relief in the quality of education area because the prior constitutional violation did not extend into this area. The court finds this contention to be without merit. A district court properly has broad discretion in desegregation cases to order relief that will facilitate the speedy eradication of all vestiges of the former dual system. Improving the quality of education for all children, especially black children, is the underlying purpose of all desegregation cases.

SUMMARY

The DCSS is an innovative school system that has travelled the often long road to unitary status almost to its end. While much of the court's order was spent on problems that still exist in the DCSS, the court has continuously been impressed by the successes of the DCSS and its dedication to providing a quality education for all students within that system. As Judge Edenfield recognized in his order of October 6, 1977 in this case: "Quality educational systems are a fragile blessing, as many metropolitan areas have learned to their sorrow. When one is found it should not be harassed out of existence to satisfy fractional technicalities."

The DCSS has eliminated most of the vestiges of the former dual system. The court finds that the DCSS is a unitary system with regard to the areas of student assignments, transportation, physical facilities, and extracurricular activities. Before the court will declare that the DCSS has obtained unitary status, however, certain changes must be made. The DCSS shall have the option of either implementing a plan by September, 1988, or implementing such a plan by September, 1989, to achieve *Singleton* compliance with regard to both teacher and principal assignments. The DCSS shall file a report with this court detailing the plan. This plan should also equalize the number of teachers with advanced degrees and more experienced teachers among the types of schools.

The DCSS shall attempt to equalize per pupil expenditures among the types of schools during the 1988-89 school year. Within two months of the end of the 1988-89 school year, the DCSS shall file a report with this court showing per pupil expenditures among the various schools. For purposes of this report, the schools shall be grouped in the same manner as plaintiffs grouped them for purposes of the hearing held on this motion.

In 1976, this court established a Bi-racial Committee to give guidance to the DeKalb County School Board regarding certain decisions. The court finds based upon the evidence presented during the hearing that there is no longer a need for the committee. Not only is there now a black school board member, but blacks are well represented throughout the administrative levels of the DCSS, including the position of assistant superintendant. Accordingly, the DeKalb County Bi-racial Committee is hereby abolished. The DeKalb County School Board, of course, may establish its own bi-racial committee.

The court denies the motion of defendants to dismiss. While the court is satisfied that the DCSS is a unitary system with regard to the areas of student assignments, transportation, physical facilities and extra-curricular activities and will order no further relief in those areas, the defendants must comply with the dictates above before this court will declare that the DCSS has obtained unitary status. The court grants in part the motion of plaintiff for supplemental relief and denies the motion to require the defendants to file a junior high plan.

IT IS SO ORDERED this 30th day of June, 1988.

/s/ William C. O'Kelley
WILLIAM C. O'KELLEY
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action No. 11946

WILLIE EUGENE PITTS, *et al.*

vs.

JIM CHERRY, Superintendent of Schools, DeKalb County, Georgia; *et al.*

ORDER AND JUDGMENT

[Filed June 12, 1969]

This case began as an in-depth undertaking to desegregate the public schools of DeKalb County, including students, faculties, and school activities. Since some 75,000 students are involved, occupying 77 elementary schools, 20 high schools, and nine special schools, a number of problems were presented. Happily for our task however, at the very time the action was filed and since that time the DeKalb County Board of Education was and has been working with the Department of Health, Education and Welfare to come up with what was to be a final and "terminal" plan of desegregation, which plan was to go into effect not later than the 1969-70 school year and which was to cover all aspects of the County's desegregation problems. After the suit was filed a preliminary

hearing was held on October 11, 1968, at which time the plan proposed by the School Board had been given general approval by HEW, subject to one exception to which reference will presently be made. A second hearing was held on April 9, 1969, by which time the proposed plan was substantially complete, and at that time counsel for all parties indicated their general approval of the plan except as it related to the Robert Shaw Elementary School.

Since the overall plan appears to be satisfactory to the School Board, to HEW, and to the plaintiffs, it would serve no useful purpose to catalog its details here. The court therefore addresses itself to the one problem remaining open, viz.: the disposition to be made of the Shaw school, the plan proposed for that school being unsatisfactory both to HEW and to plaintiffs.

The school population of DeKalb County is roughly 94.4% white and 5.6% Negro, and at the heart of the entire problem were six schools, the populations of which were all predominantly Negro.[1] In brief, what the Board proposed with respect to all of these schools except Shaw, was to close them entirely and distribute their students among other schools in their respective neighborhoods. The plants of the closed schools would then be converted into special schools for advanced and retarded children, etc., on an integrated basis. With respect to the Shaw school, however, the Board proposed to retain it in operation, despite its predominantly Negro population. In support of this proposal the Board contended that housing and apartment developments in the neighborhood showed some promise of bringing more whites into the school area by September, 1969. They also promised to end a previously established policy permitting whites to

[1] These schools were Bruce Street, Linwood, Victoria Simmons, County Line, and Robert Shaw, all of which were elementary schools, and Hamilton High School.

transfer out of the Shaw attendance area, so that between these two proposals it was hoped that the Shaw situation would remedy itself at or during the 1969-70 school year. It was also pointed out in support of this proposal that the school had a fine physical plant, an excellent faculty, a good PTA and very good community relations. Both HEW and the plaintiffs questioned this proposal as respects Shaw.

At subsequent hearings, held on April 30, 1969, and on May 28, 1969, evidence was taken as to the best disposition to be made of the Shaw school. Again all parties were in substantial agreement. Witnesses for the School Board admitted, for example, that their hopes for a racially balanced school population in the Shaw area were greatly optimistic, if not illusory. No single witness was of the opinion that the proposal advanced by the Board would or could put the Shaw school in compliance by the beginning of the 1969-70 school year. All parties, including counsel for plaintiffs and witnesses from the School Board and from HEW, did agree, however, that the Shaw school could be put in compliance in either one of two ways: (1) by abolishing the school and redistributing its population, as was being done with respect to the other five predominantly Negro schools, or (2) by either redrawing attendance lines or "pairing" Shaw with some other school so as to encompass larger white residential areas within its attendance zone. No one disputed or now disputes that either one of these proposals would bring Shaw into compliance.

The School Board still asks that it be allowed to retain Shaw in the hope that the population would balance itself, either at the beginning of or during the 1969-70 school year. The evidence, however, simply does not support this conclusion, and the court finds that the proposal by the Board to let the school continue on this basis is unsatisfactory. The only question presented, therefore, is which of the two workable alternatives shall be adopted.

Since either, under the evidence, will get the job done, the court concludes that as between closing the school on the one hand or redrawing its attendance lines or pairing it with another school on the other, the court should defer to the preference of the school authorities. HEW officials seem to feel that a redrawing of school lines would be the better solution. They agree, however, that under these circumstances the views of the School Board should be respected, and the Board prefers to close the school. In making this choice the Board contends, and the court agrees, that a redrawing of school lines in this area or a pairing of Shaw school with some other school, while bringing about desegregation on a temporary basis, would almost certainly lead to resegregation within one to two years by reason of the white population moving out of the area. The court concludes, therefore, that the only solution offering any promise of permanency is to close the Shaw school as the Board suggests and distribute its pupils among neighboring schools, and an order to this effect will be entered.

There may be other details in the overall DeKalb County plan which will require further attention of the court, but as of the moment, this concludes the only issue of any consequence now to be decided.

JUDGMENT

It is therefore CONSIDERED, ORDERED, ADJUDGED, and DECREED that the defendants, their agents, officers, employees, successors, and all those in active concert and participation with them, be and they are hereby permanently enjoined from discriminating on the basis of race or color in the operation of the DeKalb County school system. As set out more particularly hereinafter, they shall take affirmative action to disestablish all school segregation and to eliminate the effects of the dual school system.

I. SPEED OF DESEGREGATION

Commencing with the 1969-70 school year, in accordance with this decree, all grades, including kindergarten grades, shall be desegregated and pupils assigned to schools in these grades without regard to race or color.

II. PUPIL ASSIGNMENT

A. *Zones.* All students in the system shall attend classes at schools located within the zone where they reside. Said zones shall be drawn so as to disestablish the dual school system. For the 1969-70 school year, the zones in effect shall be those previously approved by the United States Department of Health, Educatior and Welfare. At all grades in schools within each zone, students will be assigned to home rooms and classes without regard to race.

B. *School Closings.* The following schools will be closed during the 1969-70 school year and thereafter until further order of the court: Robert Shaw elementary; Victoria Simmons elementary; County Line elementary; Lynwood Park elementary; Bruce Street elementary; and Hamilton High School. Students attending the schools to be closed will be placed in new attendance zones to be drawn without regard to race. The zones for all of the closed schools except Robert Shaw will be those previously filed with the court. The zone for Robert Shaw will be established no later than July 15, 1969, and submitted to the court. Defendants shall arrange for the conspicuous publication of a notice describing the new zones to be established in the newspaper most generally circulated in the community. Parents of children presently attending the schools to be closed shall be notified by letter of the new zone in which they reside. Such letters shall issue no later than July 20, 1969. Publicaton as a legal notice will not be sufficient. Copies of the notice must also be given to all radio and television sta-

tions located in the community. Copies of this decree shall be posted in each school in the school system and at the office of the Superintendent of Schools.

C. *Transfers.* No students will be permitted to transfer from schools within their attendance zones to other zones. Exceptions may be granted for non-racial reasons in the case of overcrowding, in the case of students who are physically handicapped and desire to attend a school designed for their special needs, and for students requiring a course of study not offered at the school serving their zone. However, if more than 30 students request transfer outside their zones to pursue a course of study, such transfers shall not be permitted; rather, a teacher or teachers shall be supplied within the zone to teach said courses.

D. *Overcrowding.* In case of overcrowding at any school, preference shall be given on the basis of proximity of the school to the homes of the students without regard to race or color. Standards for determining overcrowding shall be applied uniformly throughout the system.

III. CONSTRUCTION

To the extent consistent with the proper operation of the system, the County Board will, in locating and designing new schools, in expanding existing facilities, and in consolidating schools, do so with the objective of eradicating segregation and perpetuating desegregation.

IV. FACULTY AND STAFF ASSIGNMENTS

A. *Faculty Employment.* Race or color shall not be a factor in the hiring, assignment, reassignment, promotion, demotion, or dismissal of teachers and other professional staff members, including student teachers, except that race may be taken into account for the purpose of counteracting or correcting the effect of the segregated assignment of faculty and staff in the old dual

system. Teachers, principals, and staff members shall be assigned to schools so that the faculty and staff is not composed exclusively of members of one race. Wherever possible, teachers shall be assigned so that more than one teacher of the minority race (white or Negro) shall be on the desegregated faculty. The County Board will continue positive and affirmative steps to accomplish the desegregation of its school faculties and to achieve substantial desegregation of faculties in its schools for the 1969-70 school year notwithstanding teacher contracts for 1969-70 may have already been signed and approved. The tenure of teachers in the system shall not be used as an excuse for failure to comply with this provision. The County Board shall establish as an objective that the pattern of teacher assignment to any particular school not be identifiable as tailored for a heavy concentration of either Negro or white pupils in school.

B. *Dismissals.* Teacher and other professional staff members may not be discriminatorily assigned, dismissed, demoted, or passed over for retention, promotion, or rehiring, on the ground of race or color. In any instance where one or more teachers or other professional staff members are to be displaced as a result of desegregation, no staff vacancy in the school system shall be filled through recruitment from outside the system unless no such displaced staff member is qualified to fill the vacancy. If, as a result of desegregation, there is to be a reduction in the total professional staff of the school system, the qualifications of all staff members in the system shall be evaluated in selecting the staff member to be released without consideration of race or color. A report containing any such proposed dismissals, and the reasons therefor, shall be filed with the Clerk of the court, serving copies upon opposing counsel, within five days after such dismissal, demotion, etc., as proposed.

C. *Past Assignments.* The County Board shall take steps to assign and reassign teachers and other professional staff members to eliminate the effects of the dual school system.

V. REPORTS

A. On June 10 of each year, beginning in 1970, defendants will submit a report to the court and serve copies on opposing counsel, showing the number of teachers by schools, grade (where appropriate), and race they anticipate will be employed for the fall quarter or semester. Within one week after the day classes begin for the fall quarter or semester in 1969 and each succeeding year defendants will submit a report to the court and serve a copy on opposing counsel, showing the number of teachers actually working at each school by grade (where appropriate) and race.

B. On the same dates set forth in A. above, reports will be submitted to the court, and a copy served on opposing counsel, showing the number of students by school, grade, home room, and race expected (in June report) and actually enrolled (in fall report) at the schools in DeKalb County.

C. Within one week after the opening of each school year, defendants shall submit a report to the court and serve copies on opposing counsel, showing the number of faculty vacancies, by school, that have occurred or been filled by defendants since the order of this court or the latest report submitted pursuant to this subparagraph. This report shall state the race of the teacher employed to fill each such vacancy and indicate whether such teacher is newly employed or was transferred from within the system. The tabulation of the number of transfers within the system shall indicate the schools from which and to which the transfers were made. The report shall also set forth the number of faculty members of each race assigned to each school for the current year.

VI. SERVICES, FACILITIES, ACTIVITIES AND PROGRAMS

No student shall be segregated or discriminated against on account of race or color in any service, facility, activity, or program (including transportation, athletics or other extra-curricular activity) that may be conducted or sponsored by the school in which he is enrolled. A student attending school for the first time on a desegregated basis may not be subject to any disqualification or waiting period for participation in activities and programs, including athletics, which might otherwise apply because he is a transfer or newly assigned student except that such transferees shall be subject to long-standing, nonracially based rules of city, county or state athletic associations dealing with the eligibility of transferred students for athletic contests. All school use or school-sponsored use of athletic fields, meeting rooms and all other school related services, facilities, activities, and programs such as commencement exercises and parent-teacher meetings which are open to persons other than enrolled students, shall be open to all persons without regard to race or color. All special educational programs conducted by the County Board shall be conducted without regard to race or color. Athletic meets and competitions and other activities in which several schools participate shall be arranged so that formerly white and formerly Negro schools participate together.

VII. *School Equalization*

A. *Inferior Schools.* In schools heretofore maintained for Negro students, the defendants shall take prompt steps necessary to provide physical facilities, equipment, courses of instruction, and instructional materials of quality equal to that provided in schools previously maintained for white students. If for any reason it is not feasible to improve sufficiently any school formerly maintained for Negro students, where such improvement would

otherwise be required by this paragraph, such school shall be closed as soon as possible, and students enrolled in the school shall be reassigned.

B. *Remedial Programs.* The defendants shall provide remedial education programs which permit students attending or who have previously attended segregated schools to overcome past inadequacies in their education.

VIII. *Jurisdiction*

This court retains jurisdiction for the purpose of implementing this order.

This 12th day of June, 1969.

/s/ Newell Edenfield
NEWELL EDENFIELD
United States District Judge

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 88-8687 and 88-8775

WILLIE EUGENE PITTS, *et al.*,
Plaintiffs-Appellants,
Cross-Appellees,

ANN T. JOHNSON,
Intervening Plaintiff,

versus

ROBERT FREEMAN, *et al.*,
Defendants-Appellees,
Cross-Appellants.

Appeal from the United States District Court for the
Northern District of Georgia

ON PETITION(S) FOR REHEARING AND
SUGGESTION(S) OF REHEARING IN BANC

(Opinion October 11, 1989, 11 Cir., 198 ,
—— F.2d ——).

(November 13, 1989)

Before FAY and HATCHETT, Circuit Judges, and ALLGOOD*, Senior District Judge.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing in banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing In Banc are DENIED.

ENTERED FOR THE COURT:

/s/ Joseph W. Hatchett
United States Circuit Judge

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* Honorable Clarence W. Allgood, Senior U.S. District Judge for the Northern District of Alabama, sitting by designation.

No. 89-1290

Supreme Court, U.S.
FILED
MAR 16 1990
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

ROBERT R. FREEMAN, *et al.*,

Petitioners,

—v.—

WILLIE EUGENE PITTS, *et al.*,

Respondents.

ON PETITION FOR WRIT OF *CERTIORARI* TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE 1

a. The 1969 Order 2

b. 1969-1981 2

c. 1981-1986 5

d. The 1988 District Court Decision 6

e. The 1989 Court Of Appeals Decision 9

REASONS FOR DENYING THE WRIT 11

I. THE RECORD IN THIS CASE DOES NOT SUPPORT THE CLAIM THAT DCSS ACHIEVED UNITARY STATUS WITH RESPECT TO STUDENT ASSIGNMENT IN 1969 AND, WITHOUT THIS FACTUAL PREDICATE, PETITIONERS' ASSERTION THAT THE *GREEN* FACTORS MUST BE CONSIDERED IN ISOLATION WHEN REVIEWING UNITARY STATUS IS NOT PROPERLY BEFORE THE COURT 11

II. THE RECORD IN THIS CASE DOES NOT PRESENT THE FACTUAL PREDICATE FOR PETITIONERS' ARGUMENT THAT DEMOGRAPHIC FACTORS ALONE CAUSED THE PRESENT SEGREGATION IN THE DEKALB COUNTY SCHOOL SYSTEM 17

CONCLUSION 22

Page

APPENDIX 1a

Opinion and Order of the District Court, November 3, 1976 ..... 1a

Order of the District Court, May 23, 1978 ..... 27a

TABLE OF AUTHORITIES

Page

Cases

Bradley v. School Board, 382 U.S. 103 (1965) 17

Brown v. Board of Education, 349 U.S. 294 (1955) 11, 17

Columbus Bd. of Ed. v. Penick, 443 U.S. 449 (1979) 18

Davis v. Bd. of Ed., 402 U.S. 33 (1971) 18, 19

Davis v. East Baton Rouge Parish School Bd., 721 F.2d 1425 (5th Cir. 1983) 18

Dayton Bd. of Ed. v. Brinkman, 443 U.S. 526 (1979) 18

Flax v. Potts, 464 F.2d 865 (5th Cir.), *cert. denied*, 409 U.S. 1007 (1972) 18

Green v. County School Board, 391 U.S. 430 (1968) 1, 10, 11, 12, 16, 17, 18

Kelley v. Altheimer, 378 F.2d 483 (8th Cir. 1967) 13

Kelley v. Metro. Co. Bd. of Ed., 687 F.2d 814 (6th Cir. 1982), *cert. denied*, 459 U.S. 1183 (1983) 18

Keyes v. School District, 413 U.S. 189 (1973) 11, 18

Lee v. Macon Co. Bd. of Ed., 616 F.2d 805 (5th Cir. 1980) 18

Page

Monroe v. Board of Commissioners,
391 U.S. 450 (1968) 1

Montana v. United States,
440 U.S. 147 (1979) 15

Morgan v. Nucci,
831 F.2d 313 (1st Cir. 1987) 12, 16

Pasadena City Bd. of Ed. v. Spangler,
427 U.S. 424 (1976) 3, 12, 16, 19

Pitts v. Freeman,
755 F.2d 1423 (11th Cir. 1985) 6, 14, 16, 18

Raney v. Board of Education,
391 U.S. 443 (1968) 11, 13, 16

Riddick v. School Bd.,
784 F.2d 521 (4th Cir.),
cert. denied, 479 U.S. 938 (1986) 15

Rogers v. Paul,
382 U.S. 198 (1965) 17

Swann v. Charlotte-Mecklenburg Board of Education,
402 U.S. 1 (1971) ..... *passim*

U.S. v. Jefferson Co. Bd. of Ed.,
372 F.2d 836 (5th Cir. 1966),
380 F.2d 385 (5th Cir. 1967)(*en banc*),
cert. denied, 389 U.S. 840 (1967) 18

U.S. v. Texas Education Agency,
647 F.2d 504 (5th Cir. 1981),
cert. denied, 454 U.S. 1143 (1982) 16

Vaughns v. Bd. of Ed.,
758 F.2d 983 (4th Cir. 1985) 16, 18

Youngblood v. Bd. of Ed.,
448 F.2d 770 (5th Cir. 1971) 16

Respondents submit this brief in opposition to the petition for *certiorari*, which seeks review of the judgment entered in this action by the United States Court of Appeals for the Eleventh Circuit on October 11, 1989.

STATEMENT OF THE CASE

This is a school desegregation case involving DeKalb County, Georgia, a suburban county that shares a boundary with the eastern edge of Atlanta. The DeKalb County School System (DCSS) has about 80,000 students in 96 schools. Pet. App. 3a, 31a.[1] 47% of the DCSS students are black. Pet. App. 3a, 31a.

The DCSS was historically segregated by law. Pet. App. 25a. This is a garden variety desegregation case in which the original plan did not work to produce the effective dismantling of the dual system envisioned in *Green v. County School Board*, 391 U.S. 430, 442 (1968) (neither black schools nor white schools but "just schools"). There is nothing remarkable about such a conclusion. *Monroe v. Board of Commissioners*, 391 U.S. 450, 454 (1968); *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 7, 32 (1971). Indeed, the district court explicitly found that the DeKalb County schools today are both separate and unequal. Black students attend black schools and are taught by black teachers; white students attend white schools and are taught by

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[1] Citations to "Pet. App. ___" refer to the appendices to the petition for *certiorari*. Those appendices contain the district court's order of June 12, 1969 (Pet. App. 73a-82a), its memorandum opinion and order of June 30, 1988 (Pet. App. 25a-72a), and the Eleventh Circuit's decision of October 11, 1989 (Pet. App. 1a-24a). In addition, respondents have attached as an appendix to this brief decisions of the district court dated November 3, 1976 and May 23, 1978. References to those decisions are designated "Resp. App. ___." By agreement of the parties, the evidence in this case has been limited to the period up to and including September, 1986. Pet. App. 3a. Unless otherwise indicated, all of the facts in this brief refer to that time period.

white teachers. Black schools consistently have less experienced and credentialled teachers and significantly less money per pupil than white schools.

a. The 1969 Order

This case was filed in 1968. Pet. App. 26a. On June 12, 1969, the district court issued a prospective order requiring complete desegregation of the DCSS. Pet. App. 73a-82a. The breadth of the order reflected the wide-ranging impact of prior school policies on student and faculty assignment, the allocation of resources, and the quality of education in DeKalb County. Specifically, the order mandated the immediate redrawing of certain student attendance zones and the closing of certain segregated schools. Pet. App. 77a. In addition, the order required the implementation of certain student transfer policies, limited the school district's response to overcrowded schools, and provided that future school construction and renovation be directed toward "eradicating segregation and perpetuating desegregation." Pet. App. 78a. The order also required desegregation of faculty and staff, Pet. App. 78a-80a, as well as services, facilities, activities and programs. Pet. App. 81a-82a. It ordered remedial education programs for the victims of segregation. Pet. App. 82a. And, it required the school district to submit periodic reports of student and teacher assignments to the district court. Pet. App. 80a. Finally, the court retained jurisdiction over the decree in order to measure compliance toward complete segregation. Pet. App. 82a.

b. 1969-1981

After 1969, the parties and the court repeatedly took actions that confirmed that everyone viewed the 1969 order as only a first step toward desegregation. In August 1972, the school board sought and obtained permission from the district court to alter certain student attendance patterns. Order, August 22, 1972. In 1975,

plaintiffs returned to court alleging that DCSS never completely desegregated the schools by student assignment, or faculty and staff assignment. Pet. App. 26a n.1, 8a. Resp. App. 1a. DCSS argued then, as they do now, that the school district had become unitary with respect to student assignment in 1969-70. Resp. App. 13a. In 1976, the district court disagreed with that assessment after examining the school district's student assignment patterns under the majority to minority (M-to-M) transfer policies then in effect.[2] Indeed, the district court found that the M-to-M policy impermissibly burdened even voluntary desegregation. Resp. App. 14a. As the district court explained in its 1976 decision:

> [T]his court has never made any finding that defendants are operating a unitary system, and finds instead that the regulations imposed under the M-to-M program perpetuate the vestiges of a dual system . . . .
>
> [T]his court [further] finds that . . . revisions are constitutionally required so that the program will provide equal educational opportunities while helping to eliminate the vestiges of a dual school system in DeKalb County (citation omitted).

Resp. App. 13a, 14a.[3]

In examining the changes in student attendance boundaries between 1969 and 1975, the district court

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[2] "The M-to-M transfer policy allows a student to transfer from a school in which his race was in the majority to one in which his race was in the minority." Pet. App. 39a n.7.

[3] This holding explicitly rejected DCSS' argument that it had become unitary in 1969 and that *Pasadena City Bd. of Ed. v. Spangler*, 427 U.S. 424 (1976), required the court to stay its hand -- the identical argument petitioners now resurrect and seek to relitigate. Resp. App. 13a.

deemed it "apparent that the redrawing of elementary school lines in southwest DeKalb had some effect upon the perpetuation of a dual system in the county." Resp. App. 19a. The court excused some of the boundary changes on the grounds that they had been dictated by a school siting decision made prior to 1969. Resp. App. 20a. For others, it found that "defendants have not adequately met the heavy burden of explaining the alternatives chosen which tended to hinder, rather than further, desegregation." Resp. App. 21a-22a. Nevertheless, the district court refused to alter the boundary changes on the grounds that it was impossible to quantify the precise effect of the DCSS actions in light of demographic changes and that any injunction so long after the fact would be "meaningless." Resp. App. 23a. The district court did, however, order that all future attendance boundary changes had to be approved by a biracial committee. Resp. App. 25a-26a. Furthermore, the court found that "defendants have not taken adequate steps to utilize reassignment of teachers to reduce the racial identifiability of faculty" and directed that further action be taken to desegregate teacher assignment. Resp. App. 15a, 25a.

The 1976 order was never appealed. To the contrary, it formed the predicate for numerous additional actions by the district court. For example, on three occasions in 1977, the court reviewed aspects of the M-to-M transfer program under the terms of its 1976 order. *See* Orders of Jan. 31, 1977; April 18, 1977; and May 6, 1977. In October 1977, the court assessed the effect of proposed student attendance boundary changes on student assignment patterns, noting that "all such zone changes must be approved by the court." Pet. App. 8a, 26a; Order October 6, 1977 at 1. And in May 1978, the court again reviewed student assignment patterns in light of proposed attendance boundary changes, a school closing, and the continuing impact of the M-to-M transfer program. Pet. App. 8a, 26a; Resp. App. 27a-36a.

One of the specific matters reviewed in May 1978 was the school board's plan to build additional classrooms at a black school, Flat Shoals. The court permitted the classrooms, but strictly limited their use to special education students. In addition, the court said:

> In the event the Flat Shoals enrollment continues to climb, and all indications are that it will, the court recommends that defendants seriously consider alternatives to further construction, such as alterations in attendance zones, and, possibly, some form of busing, in order to remedy the overcrowding which is bound to occur and to promote desegregation in the county schools. In considering additions to other predominantly black schools in the county, defendants are advised to keep this admonition in mind.

Resp. App. 32a.

By engaging in this review process throughout 1977 and 1978, the district court was implicitly holding on each of these occasions that DCSS had not yet become unitary even with respect to student assignment. This was consistent with the court's actions over the entire period in which it repeatedly held both explicitly and implicitly that the schools had never become unitary even with respect to student assignment.

c. 1981-1986

In 1981, the case was assigned to a new district court judge. Pet. App. 44a. In 1983, plaintiffs challenged certain aspects of the M-to-M transfer program and the expansion of a high school. Pet. App. 44a. Agreeing with plaintiffs in part, the district judge found that defendants had impermissibly restricted the number of black M-to-M students at Lakeside High School and

that he was "compelled to grant relief . . ." Order, September 8, 1983, at 12. However, the district court upheld the school district's plan to expand Redan High School, finding that "the defendants' actions were not motivated by discriminatory intent." *Pitts v. Freeman*, 755 F.2d 1423, 1425 (11th Cir. 1985); Pet. App. 8a. The court of appeals reversed this latter holding, observing that DCSS had never become a unitary school district and, therefore, remained under an affirmative duty to desegregate its schools. *Id.* at 1426; Pet. App. 9a. The court of appeals further explained that the school district's compliance with its constitutional duty could only be measured by the effect of its actions and not its intent. *Id.* at 1427; Pet. App. 9a. No appeal was taken.

d. The 1988 District Court Decision

In 1986, DCSS sought dismissal of this case on the grounds that the school district was unitary. Pet. App. 27a. The district court denied the motion based on a series of factual findings that the schools remained both separate and unequal. Specifically, the district court found, with respect to student assignment, that at the time of trial:

(1) 47% of the students attending DCSS were black;

(2) 50% of the black students attended schools that were over 90% black;

(3) 62% of all black students attended schools that had more than 20% more blacks than the system-wide average;

(4) 27% of white students attended schools that were more than 90% white;

(5) 59% of the white students attended schools that had more than 20% more whites than the system-wide average;

(6) Of the 22 DeKalb County high schools, five have student populations that are more than 90% black, while five other schools have student populations that are more than 80% white; and

(7) Of the 74 elementary schools in the DCSS, 18 are over 90% black, while 10 are over 90% white.

Pet. App. 31a (footnote omitted).

Contrary to its own previous holdings and the holdings of the court of appeals, the district court also found that the school district had become "desegregated" with respect to student assignment in 1969-1970. Pet. App. 33a. Nonetheless, the district court refused to conclude that the school district's "desegregation" was a "full eradication of the vestiges of the dual system that would entitle them [DCSS] to a declaration of unitary status" with respect to student assignment. Pet. App. 33a, 37a. Moreover, the district court found that DCSS had become "resegregated" between 1969 and 1986, Pet. App. 33a-34a, and that DCSS "might have been able to do something more to maintain desegregation." Pet. App. 44a. Despite this finding, the court excused the school district's past failures on the grounds that any remedy other than busing would have been futile in the face of demographic changes in the county. Pet. App. 46a-47a.[4] Similarly, the court found that DCSS still had not achieved "maximum practical desegregation" with respect to student assignment at the time of trial. Pet. App. 47a.

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[4] Contrary again to previous holdings in the case, which had held that at least some prior boundary changes had hindered desegregation, the district court concluded in 1988 that boundary changes made by DCSS between 1969 and 1986 had made no difference in the student attendance racial mix. Pet. App. 39a. It further found that DCSS had two programs, a M-to-M transfer program and a newly instituted magnet school program, that furthered desegregation. Pet. App. 46a.

However, the district court excused that failure as well on the grounds that busing was undesirable, Pet. App. 46a, and that DCSS' future plans for expansion of magnet schools made court supervision unnecessary to bring about "maximum practical desegregation." Pet. App. 47a.

Beyond the issue of student assignment, the district court held that DCSS had never desegregated faculty and staff despite specific orders to do so in 1969 and 1976. Pet. App. 49a. As the district court found, black teachers and principals continued to be disproportionately assigned to schools that were disproportionately black by student assignment. Pet. App. 52a-53a, 55a. In particular, the court noted that four of the five black high school principals were assigned to schools more than 95% black and only one of the five high schools over 90% black had a white principal. Pet. App. 56a. Also, "[t]hirteen of the 18 black elementary school principals were assigned to schools at which the black population exceeded 90% black" and "only four of the elementary schools with black student populations over 90% had a white principal." Pet. App. 56a. The record was similar for black administrators. For example, the court found that black elementary school administrators represented 10% of all elementary school administrators in majority white schools, but 60% of all elementary school administrators in schools over 81% black. Pet. App. 56a. "At the high school level," the court concluded, "the racial skew of administrators was equally as startling." Pet. App. 56a.

Finally, the district court found that the allocation of resources and the assignment of staff in DeKalb County schools also reflected "racial skew[ing]." Pet. App. 65a-71a. Schools that were and had been white for a decade (white schools) received $2,833 per pupil; schools that were and had been black for a decade (black schools)

received $2,492 per pupil. Pet. App. 70a.[5] White schools had teachers who were, on average, almost twice as experienced as teachers in black schools. Pet. App. 66a. Three fourths of the teachers in white schools had graduate degrees while only one half to two thirds of the teachers in black schools did. Pet. App. 66a. And teacher turnover was higher in black schools than in white schools. Pet. App. 67a.

The district court concluded its 1988 opinion by declaring DCSS unitary with respect to student assignment although maximum feasible desegregation had not been achieved.[6] At the same time, the district court ordered further relief with respect to the equal allocation of resources and the nonracial assignment of faculty and staff. Pet. App. 71a-72a.

e. The 1989 Court Of Appeals Decision

The court of appeals affirmed virtually all of the factual findings of the district court. Pet. App. 24a (DCSS not yet a unitary school district); Pet. App. 4a-5a and 17a-18a (faculty and staff still segregated); 5a-7a and 22a-23a (educational inequality based on race exists).

With respect to student assignment, the court of appeals affirmed the district court's conclusion that DCSS had not fulfilled its duty to desegregate in 1969. Pet. App. 20a. It implicitly affirmed the district court's conclusion that, at the time of trial, DCSS had still not achieved "maximum practical desegregation" even with respect to student assignment. And it reversed the district court's conclusion that no further action in student

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[5] The additional $341 for each white student amounts to a difference of 13.7%. In an elementary school with 800 children, this differential totals almost $275,000 -- enough to fund ten extra teachers.

[6] The court also declared it unitary on transportation, physical facilities, and extracurricular activities, about which there was no dispute.

assignment was necessary. Pet. App. 19a, 23a. The court emphasized that DCSS had done little to desegregate after 1969, Pet. App. 23a, and that its limited actions -- including the M-to-M transfer policy and magnet schools -- affected very few students.[7] The court also held that until DCSS was a unitary school system, it had an "affirmative duty to take whatever steps may be necessary to convert to a unitary system." Pet. App. 12a, *quoting Green v. County School Board*, 391 U.S. 430, 437-38 (1968). The district court's refusal to consider busing as a possible remedy for the continued segregation in student assignment was therefore reversed. Pet. App. 23a. More broadly, the district court was ordered to consider all remedies that might be useful in effectively desegregating the DCSS schools. *Id.*

Finally, the court of appeals addressed the two arguments that now form the basis for this petition. First, the court rejected petitioners' argument that each of the factors identified by this Court in *Green* as measures of a desegregated school system can be viewed separately and in isolation. Instead, the court commented that a school district must comply with all of the *Green* factors to achieve unitary status. Pet. App. 15a. Second, the court held that until a school district is declared unitary, it must take all steps necessary to become unitary. The court commented that this included responding to demographic changes in the district. Pet. App. 20a-21a.

[7] The M-to-M transfer program affects about 5% of the district's students and magnet schools affect fewer than 1%. Pet. App. 4a, 24a n.16. Furthermore, since almost all the M-to-M students have been black, no black schools have been desegregated by this program in DeKalb County. Pet. App. 4a.

REASONS FOR DENYING THE WRIT

I. THE RECORD IN THIS CASE DOES NOT SUPPORT THE CLAIM THAT DCSS ACHIEVED UNITARY STATUS WITH RESPECT TO STUDENT ASSIGNMENT IN 1969 AND, WITHOUT THIS FACTUAL PREDICATE, PETITIONERS' ASSERTION THAT THE *GREEN* FACTORS MUST BE CONSIDERED IN ISOLATION WHEN REVIEWING UNITARY STATUS IS NOT PROPERLY BEFORE THE COURT

This Court has repeatedly held that the duty to desegregate a previously segregated school system is a duty to desegregate the entire system. *See e.g., Brown v. Board of Education*, 349 U.S. 294, 301 (1955)(defendants must "effectuate a transition to a racially nondiscriminatory *school system*"); *Green v. County School Board*, 391 U.S. 430, 436 (1968)("The transition to a unitary, nonracial *system* of public education was and is the ultimate end to be brought about"); *Raney v. Board of Education*, 391 U.S. 443, 449 (1968)(goal is a "desegregated, nonracially operated school *system*"); *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 22 (1971) ("The remedy commanded was to dismantle dual school *systems*"); *Keyes v. School District*, 413 U.S. 189, 213 (1973)(". . . School Board has the affirmative duty of desegregate the entire *system* . . .")(emphases added).

Notwithstanding this Court's clear statements that a formerly dual school system must achieve complete unitary status to discharge its constitutional duty, petitioners argue that it is possible to treat the six *Green* factors as entirely separate and isolated indicia of unitariness.[8] Although petitioners do not dispute that they are

[8] The six *Green* factors are: student assignment, faculty, staff, transportation, extracurricular activities, and facilities. 391 U.S. at 435.

operating a separate and unequal school system today, they nonetheless contend that once a court concludes that the school system has desegregated with respect to any one of the *Green* factors at any one instant in time, it should declare the schools unitary with respect to that single factor and relinquish all future jurisdiction over that issue.[9] Because the court of appeals disagreed, Pet. App. 15a-16a, petitioners assert that the court below erred. Pet. at i, question 1.

That question need not and should not be reached in this case. The factual predicate for petitioners' legal contention rests on their assertion that DCSS was unitary with respect to student assignment in 1969.[10] Because the repeated factual findings in this case have been that DCSS was not unitary with respect to student assignment either in 1969 or at any other time, the record simply does not present the question of whether the *Green* factors should be utilized together in determining a unitary system or represent, as petitioners contend, separate and isolated violations that can be cured independently.[11]

In 1969, the district court established student attendance boundaries for one year only and ordered prospective relief with respect to a variety of actions affecting desegregation with respect to student assignment in future years. Pet. App. 77a-78a. It retained jurisdiction to review the actions that would need to occur in future years. Pet. App. 82a.[12]

In 1972, the school board sought court approval for boundary changes. If the school system had been unitary with respect to student assignment in 1969, as petitioners urge, the district court would have had no right to approve or disapprove those changes. *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. at 31-32. Yet it was the school board itself that sought the court's approval, implicitly conceding that it had not yet achieved unitary status with respect to student assignment.

Then, in 1976, the district court explicitly held that DCSS was not unitary with respect to student assignment in 1969 or at any time in between. Resp. App. 13a. The district court concluded that (1) there remained vestiges of segregation in student assignment, Resp. App. 14a; (2) DCSS boundary changes had "some effect on the perpetuation of a dual system," Resp. App. 19a; (3) some boundary decisions had violated the 1969 order and had "tended to hinder rather than further desegregation," Resp. App. 22a; and (4) "the regulations imposed

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[9] Petitioners base their argument on some language in *Pasadena City Bd. of Ed v. Spangler*, 427 U.S. 424 (1976), and in *Morgan v. Nucci*, 831 F.2d 313 (1st Cir. 1987).

[10] In question 1, unlike question 2, petitioners are somewhat unclear about the date on which they assert DCSS became unitary with respect to student assignment. However, everyone agrees that student assignment patterns have become steadily and substantially more segregated since 1969. Pet. App. 18a, 38a; Pet. at 6-7 n.8. It is axiomatic that a school system cannot become more unitary as it becomes more segregated.

[11] DCSS does not seek review of the findings of the lower courts that DCSS was never unitary on faculty or staff assignment, or that it failed to provide equal educational resources to black students.

[12] This approach was entirely consistent with this Court's precedents. In *Raney v. Bd. of Ed.*, 391 U.S. at 449, the Court expressly held that "the district courts 'should retain jurisdiction in school segregation cases to insure (1) that a constitutionally acceptable plan is adopted, and (2) that it is operated in a constitutionally permissible fashion so that the goal of a desegregated, nonracially operated school system is rapidly and finally achieved,'" *quoting Kelley v. Altheimer*, 378 F.2d 483, 489 (8th Cir. 1967). In *Swann v. Charlotte-Mecklenburg*, 402 U.S. at 21, the Court held that "it is the responsibility of local authorities and district courts to see to it that future school construction and abandonment are not used and do not serve to perpetuate or re-establish the dual system."

under the M-to-M program perpetuate the vestiges of the dual system." Resp. App. 13a.

Throughout 1977, both sides apparently conceded that DCSS had not yet become unitary with respect to student assignment since both sides repeatedly sought the court's assistance in resolving various student assignment disputes. The court willingly played that role and discussed the possible need for further relief on several occasions. Pet. App. 8a, 26a; Order, October 6, 1977, at 1; Resp. App. 27a, 32a.

In 1985, the court of appeals explicitly held that DCSS had not become unitary with respect to student assignment in 1969 or at any subsequent time. *Pitts v. Freeman*, 755 F.2d at 1426; Pet. App. 9a. This holding was reaffirmed in 1989 when the court of appeals implicitly upheld the district court's finding that DCSS had not achieved unitary status with respect to student assignment in 1969. Pet. App. 33a.

Thus, every single time the district court and the court of appeals have addressed the question of DCSS' status with respect to student assignment in 1969, they have found that it was not unitary. The district court so found implicitly in 1969, 1972, and several times in 1977, and so found explicitly in 1976 and 1988. The court of appeals so found explicitly in 1985 and implicitly in 1989.

It is true that the district court found in 1988 that "the closing of the black schools in 1969 did, for a time, result in the desegregation of the schools in DeKalb County," citing a sentence in plaintiffs' trial brief. Pet. App. 33a. However, the district court also found that this "desegregation" was not the equivalent of unitary status, even with respect to the single strand of student assignment. Pet. App. 37a. All that plaintiffs conceded

and all that the court found was that the all-black schools had been closed and black students reassigned.[13]

Had the court held otherwise, it would have been retroactively declaring that its order in 1969 with respect to other prospective aspects of student assignment, such as transfer policies and construction, had been beyond the district court's proper authority. *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. at 31-32. It would also have been nullifying the prior, and more contemporaneous, holdings of the district court and the court of appeals in this case that the schools were not unitary with respect to student assignment in 1969. Thus, in order to be consistent with prior findings of fact and conclusions of law in this case,[14] the district court properly refused to find that defendants had achieved unitary status with respect to student assignment in 1969.

Moreover, even if the district court had found that DCSS had become unitary with respect to student assignment for one school year -- and in fact it found the opposite -- the result in this case would be the same. As the district court correctly noted, "[t]he achievement of

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[13] Indeed, plaintiffs expressly argued that the boundaries drawn in 1969 resulted in segregation of at least two schools. Pet. App. 35a-36a. That argument would have been illogical if the plaintiffs had been conceding unitary status as of 1969. The court conceded that the boundaries left two schools disproportionately black by student assignment but rejected plaintiffs' argument on the puzzling basis that those schools were black as a result of demographics, ignoring that the school board had set the boundaries and ignoring DCSS' duty to eliminate all segregation. Pet. App. 36a-37a. To hinge the outcome of whether a school system has achieved unitary status on an inadvertent phrase in a trial brief is absurd. "Substance, not semantics, must govern . . . ." *Swann v. Charlotte-Mecklenburg*, 402 U.S. at 31.

[14] These prior findings of fact were not appealed and are thus the law of the case. Petitioners may not now retry them. *Montana v. United States*, 440 U.S. 147, 153-154 (1979); *Riddick v. School Bd.*, 784 F.2d 521, 531 (4th Cir.), *cert. denied*, 479 U.S. 938 (1986).

unitary status in the area of student assignment cannot be hedged on the attainment of such status for a brief moment." Pet. App. 37a. This holding is the law of this case and is consistent with the holdings of this Court and the lower courts in this and other school desegregation cases. *Pitts v. Freeman*, 755 F.2d 1423; *Raney v. Bd. of Ed.*, 391 U.S. 443; *Swann v. Charlotte-Mecklenburg*, 402 U.S. 1; *Youngblood v. Bd. of Ed.*, 448 F.2d 770 (5th Cir. 1971); *U.S. v. Texas Education Agency*, 647 F.2d 504 (5th Cir. 1981), *cert. denied*, 454 U.S. 1143 (1982); *Vaughns v. Bd. of Ed.*, 758 F.2d 983 (4th Cir. 1985).

In both *Spangler* and *Morgan*, on which petitioners rely, an effective student assignment remedy had been implemented and maintained for a sufficient period of time to justify the conclusion that it had worked. Here, the district court specifically held in 1976 that the student assignment plan had not yet worked and further relief was required. Whatever the appropriateness of the rulings in *Spangler* and *Morgan* to other cases, they are simply not relevant to this case. The underlying predicate finding, that the school system had implemented and maintained a student assignment remedy that had worked, does not exist here.

Simply stated, the consistent and repeated findings of the courts in this case are that DCSS was not unitary with respect to student assignment, or faculty and staff assignment, in 1969 or at any time thereafter. Notwithstanding the dicta by the court of appeals, therefore, the first question raised by the petition for *certiorari* is simply not presented by this record.[15]

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[15] Although the dicta by the court of appeals was unnecessary to the resolution of this case, it was nevertheless correct. It is improper to treat the *Green* factors as isolated and separate violations rather than interrelated indicia of a segregated system. If a school district labels a school as a black school or a white school by any of the *Green* factors, that will have an effect on the other factors. Why else would the (continued...)

II. THE RECORD IN THIS CASE DOES NOT PRESENT THE FACTUAL PREDICATE FOR PETITIONERS' ARGUMENT THAT DEMOGRAPHIC FACTORS ALONE CAUSED THE PRESENT SEGREGATION IN THE DEKALB COUNTY SCHOOL SYSTEM

The second question presented by the petition for *certiorari* is "[w]hether a formerly *de jure* school district, *which achieved effective desegregation in student assignments in 1969*," must "remedy the segregative effects of massive demographic changes" that occurred after that date. Pet. at i, question 2 (emphasis added). This question, like the first question presented, rests on a factual premise that is not substantiated by the record. *See* Point I, *supra*. Under these circumstances, plenary review is both unnecessary and inappropriate.

The petition for *certiorari* is not aided, moreover, by the alternative claim that DCSS, although never achieving unitary status, did all that it could to improve student assignment patterns in the face of major demographic changes within the county. This Court has held that the "measure of the post-*Brown* conduct of a school board under an unsatisfied duty to liquidate a dual school system is the effectiveness . . . of the actions in decreasing or increasing the segregation caused by the

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[15] (...continued)
Green factors other than student assignment be appropriate in a school desegregation case rather than a separate action? *Bradley v. School Board*, 382 U.S. 103 (1965); *Rogers v. Paul*, 382 U.S. 198 (1965). Indeed, in this case, certain schools consistently and unquestionably have been labeled black schools by the way DCSS assigned faculty and staff. Pet. App. 4a-5a, 17a-18a, 48a-59a. Those same schools have received fewer resources, and less experienced staff. Pet. App. 22a-23a, 60a-71a. Whites have fled those schools. Pet. App. 38a. They are black schools by student assignment as well. Pet. App. 4a, 31a. Thus, the *Green* factors in this case were strongly interrelated and cannot be viewed in isolation.

dual system." *Dayton Bd. of Ed. v. Brinkman*, 443 U.S. 526, 538 (1979). Petitioners concede, as they must, that DCSS schools remain segregated today. Pet. at 6-7. Petitioners also admit their actions did not have the effect of decreasing segregation in DeKalb County. *Id.* The notion that petitioners can be excused, nonetheless, from their constitutional duty is contrary to every holding of this Court in the area of school desegregation. *E.g.*, *Columbus Bd. of Ed. v. Penick*, 443 U.S. 449 (1979); *Davis v. Bd. of Ed.*, 402 U.S. 33, 37 (1971); *Green v. County School Bd.*, 391 U.S. at 438.[16]

Respondents acknowledge the district court's holding that "efforts by the DCSS would not have effectively stopped or even slowed the rapid demographic changes that brought residential segregation to the County." Pet. App. 47a. However, the court's finding was explicitly based on the exclusion of busing as one possible remedy that might have affected residential segregation by

[16] If petitioners did not achieve unitary status, their duty to continue to take steps to achieve that status, including responding to demographic changes that occur prior to that status being achieved, is the law of this case and clearly consistent with the holdings of this and the lower courts. *Pitts v. Freeman*, 755 F.2d 1423; *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. at 20-21, 28 (school segregation impacts residential segregation, creating a "loaded game board" that the court must eliminate); *Keyes v. School Dist.*, 413 U.S. at 201-204 (same); *Columbus Bd. of Ed. v. Penick*, 443 U.S. at 459-461, 465 n.13 (1979)(same); *Flax v. Potts*, 464 F.2d 865 (5th Cir.), *cert. denied*, 409 U.S. 1007 (1972); *Lee v. Macon Co. Bd. of Ed.*, 616 F.2d 805 (5th Cir. 1980); *Kelley v. Metro. Co. Bd. of Ed.*, 687 F.2d 814 (6th Cir. 1982), *cert. denied*, 459 U.S. 1183 (1983); *Davis v. East Baton Rouge Parish School Bd.*, 721 F.2d 1425 (5th Cir. 1983); *Vaughns v. Bd. of Ed.*, 758 F.2d 983; *see also U.S. v. Jefferson Co. Bd. of Ed.*, 372 F.2d 836 (5th Cir. 1966), 380 F.2d 385 (5th Cir. 1967)(*en banc*), *cert. denied*, 389 U.S. 840 (1967)(in the Fifth Circuit, school segregation increased and caused residential segregation). If petitioners had achieved unitary status (and if their argument that student assignment can been viewed in isolation from other factors were accepted -- which it should not be), then they would be under no duty to respond to demographic changes. *Swann v. Charlotte-Mecklenburg*, 402 U.S. at 31-32.

helping to eradicate the vestiges of school segregation. Pet. App. 46a. The court of appeals reversed on the totally unremarkable grounds that the refusal to consider all remedies, including busing, was error. Pet. App. 23a. *Davis v. Bd. of Ed.*, 402 U.S. at 37. This Court has likewise held that busing is a remedy that should be considered by the district court where necessary to overcome the effects of past *de jure* segregation. *Swann v. Charlotte-Mecklenburg*, 402 U.S. at 29-31.

Without considering the effect that schools desegregated by the use of busing would have had from 1969 to present,[17] it is impossible to say that the current school segregation -- which petitioners admit -- was caused solely by residential factors. Indeed, there is strong reason to doubt that it was. In 1976, petitioners made the same argument based on *Spangler* they now make -- that DeKalb County demographic patterns were not "caused" by school board action. The district court rejected *Spangler*, saying that "[d]ifferent considerations are relevant, however, when shifts in residential patterns are accompanied by alterations in attendance lines made by school officials." Resp. App. 18a.

Between 1969 and the present, the black population of southern DeKalb county increased dramatically, Pet. App. 38a, while whites were moving to northern DeKalb county from the southern part of the county and elsewhere. Pet. App. 38a. At the same time, DCSS was identifying some schools in southern DeKalb County as black, and others in northern DeKalb County as white, by the assignment of faculty and staff and by the distribution of resources. Pet. App. 52a-57a, 65a-71a.

[17] Pairing, clustering, gerrymandering of attendance zones and controlled choice are other commonly used desegregation tools. Since all may involve the use of a school bus, each of those methods is included in the catch-all term "busing." DCSS has never employed any of those methods.

Through the confluence of all these factors, southern DeKalb County schools became steadily more black while northern DeKalb County schools remained white. Pet. App. 38a.

On this record, it is impossible to know what would have happened to this pattern if busing had been implemented in 1969 or at any point thereafter. Perhaps if whites had not been guaranteed white schools in northern DeKalb, and if schools in the south had not been become black, whites would not have fled southern DeKalb schools and created the demographic changes on which petitioners now rely. What we do know from the record is that, in 1976, the district court held that school board actions had contributed to the perpetuation of segregation. Resp. App. 19a. And, in 1978, the district court suggested that busing might be a necessary and appropriate remedy. Resp. App. 32a. In *Swann*, 402 U.S. at 14, the Court said:

> The failure of local authorities to meet their constitutional obligations aggravated the massive problems of converting from the state-enforced discrimination of racially separate school systems. This process has been rendered more difficult by changes since 1954 in the structure and patterns of communities, the growth of student population, movement of families, and other changes, some of which had marked impact on school planning, sometimes neutralizing or negating remedial action before it was fully implemented.

Those observations are equally as pertinent today in assessing the progress of desegregation in DeKalb County as they were in 1971 in Charlotte-Mecklenburg.

In sum, if petitioners' second question presented is, as it purports to be, premised upon the view that DCSS was unitary with respect to student assignment in 1969, it is not raised by this case because the premise is false. If petitioners' second question presented is premised on the view that the only action DCSS could have taken in the face of demographic changes was busing and that busing was not necessary, it is contrary to the express holding of this Court and presents no new issues for review. Finally, if it is premised on the view that even busing would not have counteracted the demographic changes in the county, it is not raised by this case because the district court expressly ruled out any consideration of the effect of busing on the schools and the neighborhoods in DeKalb county.

CONCLUSION

The questions petitioners seek to raise in this Court are simply not raised by this case. Both the district Court and the court of appeals found that DCSS is not a fully unitary school system today. Pet. App. 24a, 71a. It was not unitary on the basis of student assignment or faculty and staff assignment in 1969. Pet. App. 17a-18a, 37a, 49a.

Both courts found that today there is one set of schools that (1) are disproportionately black by student assignment, Pet. App. 4a, 31a; (2) are disproportionately black by teacher assignment, Pet. App. 5a, 51a-54a; (3) are disproportionately black by principal assignment, Pet. App. 4a-5a, 56a; (4) are disproportionately black by administrator assignment, Pet. App. 5a, 56a-57a; (5) have fewer resources per pupil, 6a, 70a; (6) have teachers with fewer years of experience, Pet. App. 6a, 66a; (7) have teachers with fewer graduate degrees, Pet. App. 6a, 66a; and (8) have higher than average teacher turnover, Pet. App. 67a.[18] Both courts found that there is another set of schools that (1) are disproportionately white by student assignment, Pet. App. 4a, 31a; (2) are disproportionately white by teacher assignment, Pet. App. 5a, 51a-54a; (3) are disproportionately white by principal assignment, Pet. App. 4a-5a, 56a; (4) are disproportionately white by administrator assignment, Pet. App. 5a, 56a-57a; (5) have more resources per pupil, 6a, 70a; (6) have teachers with more years of experience, Pet. App. 6a, 66a; (7) have teachers with more graduate degrees, Pet. App. 6a, 66a; and (8) have lower than average teacher turnover, Pet. App. 67a.[19] Both courts found that "maximum practical desegregation" has not yet been achieved on student

[18] The court of appeals did not address this final factor.

[19] The court of appeals did not address this final factor.

assignment or faculty and staff assignment in DCSS at any time up to and including the time of trial. Pet. App. 23a, 47a.

Respondents have been waiting for over 25 years for a desegregated school system. The Court should deny the petition and permit the district court to finally secure that right for respondents.

Respectfully submitted,

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Dated: March 15, 1990

APPENDIX

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

WILLIAM PITTS, et al.	)	CIVIL ACTION
	)	
vs.	)	
	)	NO. 11946
JIM CHERRY, et al.	)	

OPINION AND ORDER

In June 1969 this court entered an order in the above-entitled action enjoining the defendants from discriminating on the basis of race in the operation of the DeKalb County school system. The court retained jurisdiction over the case for the purpose of implementing its order. In September 1975 and August 1976[1] this court held hearings upon the complaints of a group of citizens that the DeKalb County school system was out of compliance with the court's 1969 order. Basically these citizens (movant-plaintiffs) alleged (1) that defendants were violating the order with regard to the majority-to-minority transfer program; (2) that defendants were violating the order with regard to assignment of teachers and administrative personnel to the county's schools; and (3) that changes in attendance zones were effecting resegregation. The court is now prepared to state its findings and conclusions as to these claims.

Before turning to the merits of these charges the court must first address defendants' contentions concerning the procedural posture of the parties to this action.

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[1] The delay was occasioned in part by the fact that, due to one tragic accidental death and the removal of two lawyers from the State, the plaintiffs went for several months without local counsel.

Defendants argue that the instant suit may not be maintained as a class action, and further, that the instant case has become moot. This action was originally filed on behalf of two classes: all adult Negro citizens and their minor children who reside in DeKalb County, and all adult white citizens and their minor children residing in DeKalb County. Although the court has repeatedly referred to the plaintiffs herein as a class, no "class" has ever been properly certified by this court within the meaning of Rule 23 of the Federal Rules of Civil Procedure which became effective January 1, 1974. Even though the court held in 1969 that its jurisdiction over the case would continue, defendants claim that inasmuch as the original named plaintiffs are no longer enrolled in the DeKalb school system, this action should now be dismissed as moot. Pasadena City Board of Education v. Spangler, 440 U.S.L.W. 5114, 5115 (June 29, 1976); Indianapolis School Commissioners v. Jacobs, 420 U.S. 128, 130 (1974).

It appears, however, that one of the named plaintiffs is still a student in the DeKalb County schools, and as to this student, the case is still a live controversy. Accordingly, the court will interpret the movant-plaintiffs' petition for relief under the 1969 order as a motion to intervene, joining the original named plaintiff. The Fifth Circuit has held that intervention

> "... is the proper course for parental groups seeking to question current deficiencies in the implementation of desegregation orders. ... The petition for intervention would bring to the attention of the district court the precise issues which the new group sought to represent and the ways in which the goal of a unitary system had allegedly been frustrated. The district court could then determine whether these matters had

> been previously raised and resolved and/or whether the issues sought to be presented by the new group were currently known to the court and parties in the initial suit. ... If the court felt that the new group had a significant claim which it could best represent, intervention would be allowed." Hines v. Rapides Parish School Board, 479 F.2d 762, 765 (5th Cir. 1973).

The court finds that the movant-plaintiffs, Monica Rocker, et al., satisfy the requirements for intervention under Hines and therefore ALLOWS the movant-plaintiffs to intervene in the instant action. Rule 24(b), Fed.R.Civ.P.

The court further finds that the named movant-plaintiffs represent a class of unnamed individuals capable of being certified within the meaning of Rule 23, Fed.R.Civ.P., and hereby CERTIFIES the class under Rule 23(b)(2) as consisting of all black citizens and their minor children residing in DeKalb County, cf. Pasadena City Board of Education v. Spangler, supra at 5115. Although the named plaintiffs all reside in the southern part of the county, the court finds that the named plaintiffs and their attorneys have and will adequately represent the interests of the black residents throughout the county.

Factual Background

M-to-M Program

The DeKalb County school system is currently operating a majority-to-minority (M-to-M) transfer program. Under this program any student attending a neighborhood school in which his race is in the majority may transfer to a school where his race is in the minority under the following conditions: the receiving school

must have the capacity to hold an additional student, and the M-to-M student may not transfer to a school in which the minority race comprises more than 40% of the student body. Additionally, the student may transfer only to the "next closest school" in which space is available and in which the minority race is less than 40%.

A parent wishing to have his student transferred under M-to-M must apply for such transfer through the principal of the student's neighborhood school. The parent is then told which school or schools qualify as the "next closest school" to the neighborhood school. The parent may then apply to the principal of one of these next nearest schools for a transfer. The decision as to whether the student may transfer is made by the principal of the proposed receiving school and is based solely on whether the school has the capacity and meets the 40% requirement. No exceptions to these rules are made, for example, to allow members of one family to attend the same receiving school, if to do so would increase the minority population of the school over 40%. If the proposed transfer school does not meet these requirements, the parent is advised of the next nearest school which would satisfy these standards.

At the commencement of each school term, every student is required to register at his neighborhood school. A student who has been attending another school the previous year under M-to-M must still register at his neighborhood school and reapply for an M-to-M transfer to the school he had previously attended. If over the course of the year that receiving school has become over-crowded or has passed the 40% mark, the student will not be allowed to reenter the receiving school but must either return to his neighborhood school or attend the next available nearest school.

Some parents desire to send their children to schools other than the next nearest school under the M-to-M program, claiming that certain schools in the county are

better than others. A study of standardized achievement test results in the lower grades indicates that the average scores are generally higher in those schools which have a high predominance of white students than in those so-called "target" schools which are almost completely black in the southern part of the county. The distribution of reading and math resources, such as specialists and paraprofessionals, indicates that those target schools receive a higher percentage of such resources than certain predominantly white schools, although certain reading resources for advanced readers are not now present in these target schools. These latter resources, however, are capable of being moved among schools as the need for them arises. A comparison of selected aspects of the predominantly black schools in the southern part of the county with selected predominantly white schools in the county shows no apparent trend of superiority among any group of schools. These aspects included number of library books, average number of years of staff education and experience, and pupil expenditures for staff per individual school.

For the 1975-76 school term, 96 students exercised the M-to-M option; two students' requests for M-to-M transfers were rejected. As of August 16, 1976, 27 students had transferred under the M-to-M program, and three requests for such transfers were rejected for the 1976-77 term.

The school system provides bus transportation for all those students who live more than a mile from their neighborhood school and is reimbursed by the state for transportation provided to students living over a mile-and-a-half from their neighborhood school. No transportation is currently provided to students who exercise the M-to-M option and attend a school other than their neighborhood school, nor are M-to-M students reimbursed for expenditures made for self-transportation.

Faculty

Out of the total number of faculty positions in DeKalb County, approximately 15% are held by black teachers in the elementary schools and 13.6% in the high schools for the 1976-77 school year; 32.4% of the newly hired teachers are black in the elementary schools, 33.1% in the high schools. To fill a vacant position in a school that has fewer than the system-line average of black teachers, only black applicants are sent to the school for interviews.

The percentage of black teachers in individual schools in the county ranges from 6.9% to 48.3% in the elementary schools, and from 9.8% to 25% in the high schools. Those schools with the highest percentage of black teachers generally also have the greatest predominance of black students. For example, the faculty at Leslie J. Steele Elementary School is 48.3% black, while its student body is 98% black. At Terry Mill Elementary School the proportion of black teachers is 44.1%, while its student body is 98% black. Conversely, at Montgomery Elementary, where 12% of the students are black, only 6.9% of the faculty are black.

Two reasons were supplied by the Associate Superintendent for Community and Staff Relations to explain the higher concentration of black teachers in the more predominantly black schools: (1) teachers living near those schools prefer to teach in a school near their homes and (2) principals desire to have more teachers who are the same race as most of the students so that the students have someone to "relate to". Involuntary transfers are rarely used to alter the distribution of teachers in the individual schools.

Attendance Zone Changes

A number of attendance lines changes were instituted in the southwest portion of DeKalb County in 1974

and 1975. This same area has experienced an increase in the percentage of black students, due to the influx of black families and the departure of white families from the area. The general pattern of transition is for the black residential area to proceed on a circumference which has been expanding, year to year, from the Atlanta city limits into DeKalb County. The transitional area has been moving from northwest to southeast. Accompanying this transition has been an increase in the ratios of black students in the schools in this area. For example, the area served by Clifton, Meadowview, and Cedar Grove (formerly Bouldercrest) elementary schools, has changed from 7.4% black students in 1972 to 50% black students in 1975.

Major alterations in elementary school zones were implemented in 1974 and 1975 affecting the area covered by the above-mentioned schools. The primary factor motivating these changes was the closing of the Bouldercrest school which had been built on a site too small by state standards. The site for a new school (Cedar Grove) had been chosen in 1969, before this court's previous order, and at a time when the population in the entire southwest portion of the county was 98% white. There is no claim of impropriety in the choosing of the Cedar Grove site.

The building of the new school necessitated boundary line changes because the Cedar Grove site was located within the Clifton attendance zone. Prior to the change, both the Bouldercrest and Clifton school zones extended southward to the Clayton and Henry county lines. The Meadowview school zone formed an immediate circumference around that school. In January 1974, the new school zone which would be served by Cedar Grove was announced. It encompassed the predominantly white southern halves of the Bouldercrest and Clifton school zones, lying below the South River and Interstate 285. Most of the upper half of the old

Bouldercrest zone was added to Meadowview, except that portion immediately surrounding Bouldercrest school. The former Clifton zone was cut off at the South River and was pushed back into almost half of the original Meadowview zone. Since the new Cedar Grove school could not be ready as planned for the fall of 1974, students in the new Cedar Grove district attended the old Bouldercrest school for the 1974-75 term, accompanied by the students residing in the area immediately surrounding Bouldercrest.

When the zone change was made, Clifton went from 29.6% black (in June 1974) to 63.4% black (in September 1974); Meadowview went from 51.8% black to 58% black; Bouldercrest changed from 7% to 14% black. In the fall of 1975, the new Cedar Grove Elementary School was opened, and the area immediately surrounding the Bouldercrest school was zoned into the Clifton zone as originally planned. With this change Clifton's black population increased from 67% (as of June 1975) to 77% (as of September 1975); Meadowview changed from 62% to 67% black; and Bouldercrest's, now Cedar Grove's, black population decreased from 14% to 12%. The net effect of the changes meant that the two older schools would now serve the predominantly black population in the northern part of the area, and the new school would service the predominantly white students to the south. It is impossible to determine, however, to what extent changes in the racial composition of the schools was affected by changes in the racial composition of the residential areas encompassed by these school zones.

The high schools in this area were also subject to zone changes and substantial shifts in their racial ratios during the years 1971 to 1975. The area now served by Gordon, Walker, and Cedar Grove high schools has changed from 22% black students in 1971 to 70% black students in 1975. The building of a new high school,

Cedar Grove, in 1972, was again the major cause of attendance zone changes. The new school was built to relieve over-crowding in Walker and Gordon high schools which formerly served the area, and to reduce the distance traveled for students in the south part of the county. Cedar Grove was built on available land adjacent to the new elementary school, and there is no allegation of impropriety in the location of this school.

In 1971, the year before Cedar Grove High School opened, Gordon was 45% black and Walker was 3.9% black. Columbia and Southwest DeKalb, surrounding schools also affected by the building of Cedar Grove, each were 2.7% and 4.5% black, respectively. The new Cedar Grove school zone cut off the southern portions of the Walker and Gordon zones, constricting those zones to the area north of Interstate 285.

In 1974, additional zone changes were made affecting these high schools. Gordon's southern boundary was pushed further north to I-20, and the racially mixed residential area remaining went to Walker. Cedar Grove's zone, which originally extended past I-285, was constricted south of I-285. The Walker zone absorbed this area and now completely separated the Cedar Grove zone from the Gordon zone. Gordon's black population went from 89% in September 1973 to 92% in June 1974, and 97% in September 1974. Over this same period, Walker went from 35% to 43% and 60% black. Cedar Grove's black population remained at 14-16% during this period.

An additional zone change was made for the 1975-76 school term whereby part of Southwest DeKalb's attendance area (1% black), which had become overcrowded, was zoned into Cedar Grove, which was under capacity. The area rezoned was primarily white. At the time of the zone change Columbia (then just under 50% black) was also under capacity.

The court cannot determine, as to these high school boundary-line changes, to what extent shifts in residential patterns affected the rate of change in the racial compositions of the schools.

Legal Discussion

M-to-M Program

In its June 1969 order, this court held that defendants "shall take affirmative action to disestablish all school segregation and to eliminate the effects of the dual school system." Pitts v. Cherry, No. 11946 (N.D. Ga., June 12, 1969). For the past few years, the DeKalb school system has operated an M-to-M program, outlined above, as such an affirmative action. Although the program technically violated the 1969 order which prohibited transfers of students outside their respective attendance zones, M-to-M transfer programs were given approval by the Supreme Court in Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 26 (1971):

> "An optional majority-to-minority transfer provision has long been recognized as a useful part of every desegregation plan. Provision for optional transfer of those in the majority racial group of a particular school to other schools where they will be in the minority is an indispensable remedy for those students willing to transfer to other schools in order to lessen the impact on them of the state-imposed stigma of segregation."

The current operation of the DeKalb M-to-M program, however, imposes impermissible burdens upon those students wishing to take part in the program, discouraging widescale use of this desegregation tool. A student wishing an M-to-M transfer, for example, faces a

substantial amount of unnecessary red tape before his transfer may be effected. The student must go through the same administrative process each year, never becoming a permanent student in the transferee school.

Even greater constraints are placed on M-to-M transferees and their parents in terms of the permissible schools into which students may transfer and the lack of transportation provided to get the transferees to those schools. Defendants justify the "next nearest school" requirement for M-to-M transfers as preserving the neighborhood school concept as much as possible. As the Supreme Court stated in Swann, supra, "All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes. But all things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation." 402 U.S. at 28. In the instant case, due to the racial distribution in DeKalb County, the next nearest school limitation may compel a student to transfer to a school whose racial composition is only marginally different from his neighborhood school, a difference perhaps not worth the transfer.

Defendants have offered to alter the present program by requiring that a student may transfer only to the next nearest school where his race comprises no more than 15% of the student body. Defendants contend that this will accommodate the preferences of many of the named movant-plaintiffs to transfer to the more predominantly white schools. However, this same limitation will inhibit students who desire to attend a school where their race is in the minority, but which is also close to their homes.

The purpose of the current 40% requirement, and presumably the proposed 15% figure, is actually to prevent those schools from "tipping", or rapidly becoming predominantly black schools. Defendants have cited no authority, nor can this court find any support for the use

of such limitations in an M-to-M program to retard any change in the racial composition of a school in this manner. In fact, the implication from Swann is that very few restrictions should be imposed upon a student desiring to participate in an M-to-M transfer: "In order to be effective ... space must be made available in the school to which he desires to move." 402 U.S. [at] 26-27 (emphasis added). Currently, a student may transfer only to a qualifying school where space is available, and is given no priority over other students. The effect may often be to preclude a child from attending his transferee school the following year if space in that school becomes unavailable. The Fifth Circuit has held, however, that under M-to-M programs, "a transferee is to be given priority for space." Singleton v. Jackson Municipal Separate School District, 426 F.2d 1364, 1369 (5th Cir. 1970). See Lee v. Macon County Board of Education, No. 70-251 (N.D. Ala., Aug. 27, 1976), slip opinion at 26.

The effectiveness of an M-to-M program is also dependent upon the provision of free transportation. Swann v. Board of Education, 402 U.S. [at] 26-27; United States v. Greenwood Municipal Separate School District, 460 F.2d 1205 (1972). The lack of transportation for transferees under the present DeKalb plan forces the students and "their parents to shoulder the burden of eliminating these vestiges of segregated schools," United States v. Greenwood, supra, 460 F.2d at 1207, and, in fact, makes it impossible for some students to participate in the program.

Defendants complain that if the next nearest school rule is eliminated, and free transportation is required, the school system will be faced with an unreasonable and unfeasible task of transporting select students to different schools all across the county. Before it is known how many students will participate in a revised M-to-M program, however, such fears are purely speculation.

Defendants also raise a general objection to any revisions made by this court in the voluntarily-established M-to-M program. Defendants maintain that they have complied with the specific mandates of this court's 1969 order and are now operating a unitary school system. Therefore, the court is without power, defendants argue, to make any changes in the school program which accomplishes the intentions of the previous order. Pasadena City Board of Education v. Spangler, supra, 440 U.S.L.W. at 5117. However, this court has never made any finding that defendants are operating a unitary system, and finds instead that the regulations imposed under the M-to-M program perpetuate the vestiges of a dual system.

Defendants also rely upon the Equal Educational Opportunity Act of 1974, 20 U.S.C. §§ 1701, et seq., to block the above-mentioned changes in their M-to-M program. The Act, which emphasizes that "the neighborhood is the appropriate basis for determining public school assignments," 20 U.S.C. § 1701(b), also states that

> "No court ... shall ... order the implementation of a plan that would require the transportation of any student to a school other than the school closest or next closest to his place of residence which provides the appropriate grade level and type of education for such student."

The Act also makes clear, however, that its provisions are "not intended to modify or diminish the authority of the courts of the United States to enforce fully the fifth and fourteenth amendments to the Constitution of the United States." 20 U.S.C. § 1702(b). This court, therefore, retains its equitable powers to remedy past wrongs, the scope of which "is broad, for breadth and flexibility are inherent in equitable remedies." Swann, supra, 402 U.S. at 15. In analyzing the impact of the Educational

Act upon the court's equitable powers, the First Circuit stated in Morgan v. Kerrigan, 530 F.2d 401, 412-13 (1st Cir. 1976),

> "By explicitly leaving the district court the power to determine the adequacy of remedies, the Act necessarily does not restrict the breadth of discretion of that court to determine what scope of remedy is constitutionally required. Thus the Act manifests its purpose not to limit judicial power but to guide and channel its exercise. In a sense it is a statutory 'less restrictive means' guideline, endeavoring to ensure that substantial compulsory transportation be used as a last resort."

It should be noted that the revisions of the M-to-M program contemplated by this court do not involve a program of forced busing, a remedy which the Act seeks to discourage, but a program which will provide transportation for those students who volunteer to transfer to a school in which their race is in the minority. So long as the school system operates its M-to-M program, this court finds that transportation and other revisions are constitutionally required so that the program will provide equal educational opportunities while helping to eliminate the vestiges of a dual school system in DeKalb County, cf. Morgan v. Kerrigan, supra, 530 F.2d at 413.

Teacher Assignments

This court held in its 1969 order that

> "Race or color shall not be a factor in the hiring, assignment, reassignment, promotion, demotion, or dismissal of teachers and other professional staff members, including student teachers,

> except that race may be taken into account for the purpose of counteracting or correcting the effect of the segregated assignment of faculty and staff in the old dual system." (Slip opinion at 7.)

The court accordingly required that "[w]herever possible, teachers shall be assigned so that more than one teacher of the minority race (white or Negro) shall be on the desegregated faculty." Id. The defendants have more than complied with this explicit requirement. However, the court also mandated that the

> "County Board shall establish as an objective that the pattern of teacher assignment to any particular school not be identifiable as tailored for a heavy concentration of either Negro or white pupils in the school .... [and] shall take steps to assign and reassign teachers and other professional staff members to eliminate the effects of the dual system." (Slip opinion at 8.)

The court finds that the defendants have not taken adequate steps to utilize reassignment of teachers to reduce the racial identifiability of faculty in accordance with the standard set out in Singleton v. Jackson Municipal Separate School District, supra. In Singleton, the Court of Appeals for the Fifth Circuit held that in order to reduce racial identifiability of a faculty, staff should be assigned so that the ratio of black to white teachers in each school is "substantially the same" as such ratio throughout the entire school system. 419 F.2d at 1218.

Defendants ask that the court compare the facts in the instant case with Ellis v. Board of Public Instruction of Orange County, 423 F.2d 203, 205 (5th Cir. 1970), where the court found the school system to be in compliance with Singleton, despite the existence of racial ratios

in individual schools twelve percentage points higher than the racial ratio of the entire school system. While the court is aware of the problems inherent in requiring that the teachers at any school be maintained at an exact arbitrary racial ratio, United States v. Wilcox County Board of Education, 494 F.2d 575 (5th Cir. 1974), the current 40-48% of black teachers in some of the more predominantly black elementary schools does not even "approximate" the 15% system-wide ratio. See Carter v. West Feliciana Parish School Board, 432 F.2d 875, 876 (5th Cir. 1970).

A significant reason for the wide disparity in the racial ratios amongst schools in DeKalb County is the reliance on the replacement process, and the avoidance of reassignments to even out the distribution of faculty. The court finds that this system does not comply with the Singleton standard, nor with this court's 1969 order which required reassignment of teachers to eliminate the effects of the dual school system. Accordingly, reassignment of teachers must be utilized to make the racial ratio of the faculty in individual schools truly substantially similar to the system-wide ratio, Lee v. Macon County Board of Education, supra, slip opinion at 23.

Attendance Zone Changes

In its previous order, this court held that

> "[T]o the extent consistent with the proper operation of the system, the County will, in locating and designing new schools, in expanding existing facilities and in consolidating schools, do so with the objective of eradicating segregation and perpetuating desegregation."

Plaintiffs contend, however, through a report prepared for the court by the Department of Health, Education and Welfare, that the "DeKalb County School System, in

its response to racial transition, ignored its responsibility to affirmatively eradicate segregation and perpetuate desegregation." HEW Report, at 11. Specifically, plaintiffs argue that the school zone changes made by defendants have resulted in racially identifiable schools.

Defendants counter by stating that the increasing number of racially identifiable schools in the southwest section of DeKalb County has been caused not by the zone changes implemented by the board, but by the natural population transition which has occurred in the residential sections of that area. Defendants further argue that having implemented the 1969 desegregation order, they cannot be held responsible for residential patterns that have developed since that order. Defendants rely upon Swann, supra, wherein the court stated

> "Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies since the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system. This does not mean that federal courts are without power to deal with future problems; but in the absence of a showing that either the school authorities or some other agency of the state has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools, further intervention by a district court should not be necessary."

Defendants also point to the recent case of Pasadena Board of Education v. Spangler, 44 U.S.L.W. 5114 (June 29, 1976), which involved the subsequent interpretation of a desegregation plan entered by a district court in

1970. The court-approved plan required that no school have a majority of minority students. Within two years of the entry of the order, changes in the residential patterns in the area caused some schools to have a black enrollment in excess of 50%. The Supreme Court found that although the school system had not yet achieved the unitary system contemplated by the above-quoted language from Swann,

> "* * * [T]hat does not undercut the force of the principle underlying the quoted language from Swann. In this case the District Court approved a plan designed to obtain racial neutrality in the attendance of students at Pasadena's public schools. No one disputes that the initial implementation of this plan accomplished that objective. That being the case, the District Court was not entitled to require the School District to rearrange the attendance zones each year so as to ensure that the racial mix desired by the court was maintained in perpetuity." Id. at 5117.

In Pasadena, once the initial desegregation order had been implemented, changes in residential patterns and resulting shifts in the racial makeup of schools were unaffected by any actions taken by school officials, because no official action was taken. It is for this reason that the district court in Pasadena was forbidden from ordering school officials to restructure attendance lines.

Different considerations are relevant, however, when shifts in residential patterns are accomplished by alterations in attendance lines made by school officials. The Supreme Court has held that

> "* * * [A]ny attempt by state or local officials to carve out a new school district from an existing district that is in the process of dismantling a dual school system 'must be judged according to whether it hinders or furthers the process of school desegregation. If the proposal would impede the dismantling of a dual system, then a district court, in the exercise of its remedial discretion may enjoin it from being carried out.'" United States v. Scotland Neck Board of Education, 407 U.S. 484, 489 (1971), quoting Wright v. Council of Emporia, 407 U.S. 451, 460 (1971).

In the instant case new boundary lines were drawn with the building of Cedar Grove elementary and high schools. At the same time, schools in that area experienced substantial changes in their racial composition. This court must look to whether such boundary-line changes had the effect of impeding desegregation in these schools. Of course, such inquiry cannot ignore the racial transition occurring in this area apart from any zone changes.

The court must pursue this examination despite its finding that boundary-line changes were made for the most part to accommodate the new schools which had been built to relieve overcrowding. In determining whether a school board's action is permissible, courts have "focused upon the effect -- not the purpose or motivation" of such action on the dismantling of a dual system. "The existence of a permissible purpose cannot sustain an action that has an impermissible effect." Wright v. Council of Emporia, supra, 407 U.S. at 462.

In applying this test to the facts as found by the court, it is apparent that the redrawing of elementary school lines in southwest DeKalb had some effect upon the perpetuation of a dual system in the county. Over the course of one summer, Clifton went from 30% to

63% black. Surely the influx of black families and departure of white families accounted from some of the increase. But the redrawing of attendance lines along I-285 and the South River must have contributed somewhat to this dramatic increase. Additionally, it must be said that the total effect of the horizontal boundary lines drawn to accommodate these three elementary schools was to ensure that one predominantly white school, Cedar Grove, would remain predominantly white for a number of years.

Although the school board's actions may have had these effects, its zoning decision must also be scrutinized in the context of the circumstances existing at the time and the feasibility and practicality of available alternatives. For it is only the availability of more promising courses of action to dismantle a dual system that "places a heavy burden upon the board to explain its preference for an apparently less effective method." Green v. County School Board, 391 U.S. 430, 439 (1967), Wright v. Council of Emporia, supra, 407 U.S. at 467.

At the time these attendance zone changes were made, the Cedar Grove site had already been chosen, and the choice was made at a time when the racial composition of the area was almost completely white. As it developed, it was the location of this new school, accompanied by a transition in the residential patterns in the area, which had the effect of perpetuating a dual system, because the school site dictated to a large extent the placement of the new attendance lines. The propriety of the selection of the Cedar Grove site, however, is not in question.

Even so, plaintiffs, supported by HEW, contend that, given the location of the Cedar Grove Elementary School, attendance lines could have been drawn in such a way as not to accentuate the racial identifiability of the schools. HEW's report suggests that since blacks reside primarily north of I-285 and the South River, and most

whites are located to the south of those lines, drawing boundary lines vertically, like some of the original lines, as opposed to the horizontal lines chosen by the defendants, would have created more racially balanced zones. However, HEW's report fails to consider the exact location of families south of I-285 and the South River. For with the exception of the predominantly black County Line community, just north of Henry County, most of the population clusters towards the center of this area. The drawing of vertical lines would thus have had little effect upon the racial makeup of the school. In fact, because of the residential patterns in southwest DeKalb as of 1973-74, and because of the location of Meadowview, Clifton and Cedar Grove within those patterns, only the drawing of extremely gerrymandered lines would have resulted in more racially balanced schools. Such gerrymandering would have created large travel distances for students and would have been generally impractical. In light of the circumstances existing at the time these zone changes were made, it cannot be said that such changes were constitutionally impermissible.

The same is largely true with respect to changes in high school attendance zones. The location of the Cedar Grove High School mandated to a certain degree the establishment of a predominantly white school because of the racial composition of the population surrounding Cedar Grove, and two predominantly black schools, because of the residential transitions occurring in that area. The alternative of vertical boundary lines, suggested by HEW, was virtually impossible because Cedar Grove High School is located directly below Gordon.

Plaintiffs and HEW, however, also complain about certain changes that were made after the Cedar Grove school had opened and the area had been rezoned accordingly. As to these changes, there appear to have been alternatives -- among them, to make no change at all -- and defendants have not adequately met the heavy

burden of explaining the alternatives chosen which tended to hinder, rather than further, desegregation. Specifically, the zone changes in 1974 which constricted Gordon to the area north of I-20 and moved Cedar Grove's northern boundary to I-285, with the area in between going to Walker, had the effects of (1) increasing Gordon's already predominantly black population, (2) isolating the Cedar Grove area from the path of residential transition, with Walker serving as a buffer zone, and (3) helping Walker to tip over to a predominantly black school. Defendants justify the Cedar Grove boundary change by demonstrating that 35 out of 43 students removed from Cedar Grove as a result of the rezoning were white. Yet, defendants could clearly see that this area rezoned from Cedar Grove to Walker was in the direct path of residential transition and was becoming increasingly black. Defendants have offered no further justifications for their zone changes.

Another contested boundary line change occurred in 1975 when part of Southwest DeKalb's attendance area was zoned into Cedar Grove to relieve overcrowding in Southwest DeKalb. The zone change split a subdivision down the middle and created traveling distances of up to five-and-a-half miles for some of the rezoned children. HEW points out that, like Cedar Grove, Columbia was also under capacity and a largely white area between I-20, Candler Road and I-285 could have been rezoned from Southwest DeKalb into Columbia. Such a change would have impeded Columbia's transition towards becoming another predominantly black school, and, in addition, the maximum travel distance for a rezoned child would be only two-and-a-half miles. Therefore, in an attempt to relieve overcrowding in one school, defendants failed to choose an available alternative which would have also furthered desegregation.

There are two problems with a finding by this court that the above boundary changes had the effect of hind-

ering the process of desegregation within the meaning of Wright, supra. First, because of the rapid residential transition occurring throughout this section of the county, and affecting the racial ratios of schools in which no zone changes have been made, it is impossible to determine whether the zone changes in question actually accelerated the transition at one extreme, or whether they had little effect on the process of desegregation which was in fact impeded by a natural process of residential transition. The second problem is that even were the court to find the former to be true and conclude that therefore the boundary changes were impermissible, an injunction against their imposition at this point in time would be meaningless. The percentage of blacks in this area has increased dramatically and, as the HEW report admits,

> "Because of this concentration of black students, we believe consideration of remedies would have to look beyond mere alteration of school zone lines in the area schools." HEW Report, at 11.

Whatever indeterminable effect the aforementioned zone changes have had on the process of desegregation in this portion of DeKalb County, the actions of the defendants in making these changes do not justify the ordering of a remedy which would go beyond the alteration of school zone lines. The court does wish to ensure, however, that any future zone changes as well as the purchase of any new school sites are made so as to have the effect of furthering as opposed to hindering desegregation. Accordingly, a biracial committee will be established which will, as part of its functions, approve such zone changes and school site purchases. Singleton v. Jackson Municipal Separate School District, supra, 426 F.2d at 1370; Ellis v. Board of Public Instruction, 423 F.2d 203, 207, n.4 (5th Cir. 1970).

ORDER

For the foregoing reasons, the court hereby ORDERS that:

(1) The M-to-M program be modified so that any student may transfer from a school where his race is in the majority to any other school within the county in which his race is in the minority. Space must be made available in the receiving schools for transferees who shall be given priority for space over other new students, but in no instance shall a transferee displace a student previously enrolled in the receiving schools.

(2) Such M-to-M transfers shall be effected by as simple an administrative procedure as possible. The school system will provide M-to-M transfer forms at the student's neighborhood school. The student's parent or guardian must, under usual circumstances, complete the form on or before May 1 of the school year preceding the school year for which the student desires to participate in the M-to-M program. The school system shall provide the student with a copy of the form which shall be presented to the receiving school by the student on the annual registration day.

(3) The school system shall publicize the M-to-M transfer procedure by paid advertisements in local newspapers; news releases to all media; brochures available at each school; and notices placed in school newsletters and newspapers no later than March 15 of each year. Such publicity shall be followed by notices sent to each parent or guardian no later than March 31 of each year.

(4) Any student may exercise a majority-to-minority transfer once during the student's elementary career and once during the secondary school career. One a transfer is effected, the transferee need not reapply for the trans-

fer each year. If the student's race becomes a majority in the receiving school, he may (a) remain at the receiving school; (b) return to this neighborhood school; or (c) transfer to another school in which his race does not comprise more than a majority of the student body.

(5) Transportation shall be provided at the expense of the school system to any M-to-M student who so requests and who lives more than one mile from the receiving school. Defendants may seek modification of this provision of the order if, based on the number of students electing to exercise M-to-M transfers and the receiving schools chosen, a workable plan of transportation proves impossible.

(6) These changes in the M-to-M program shall be implemented for transfers beginning with the 1977-78 school term. Students wishing to participate in the program for the remainder of the 1976-77 school term, may transfer to a school which qualifies under the provisions of this order and in which there is space available. Transferees must provide their own transportation for the balance of the 1976-77 school term.

Distribution of Faculty

(7) The ratio of black to white teachers in each school must be substantially similar to the system-wide racial ratio. Defendants are required to reassign teachers with all deliberate speed so that the racial distribution of faculty in all schools approximates the distribution of faculty in the entire school system.

Biracial Committee

(8) A biracial committee shall be established which shall oversee the operation of the M-to-M program as modified by this order. The committee's approval must

also be secured on any proposed school zone changes or school site purchases. The committee is to be constituted by this court from names submitted by parties to this suit. The number of members will be determined by this court and shall consist of no more than 20 nor less than ten members. The membership shall be equally divided between whites and blacks and the chairmanship shall alternate annually between a white and a black chairman. The committee shall make annual reports to the court concerning the functioning of the M-to-M program and any other action taken by the committee on proposed attendance zone changes or school purchase sites.

IT IS SO ORDERED.

This 3rd day of November, 1976.

/s/
NEWELL EDENFIELD
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

WILLIE EUGENE PITTS, et al.	)	
	)	CIVIL ACTION
vs.	)	
	)	
JIM CHERRY, et al.	)	NO. 11946

ORDER

This school desegregation action came before the court on May 15, 1978 for a hearing on four issues: (1) the closing of Heritage Elementary School, (2) the construction of eight additional classrooms at Flat Shoals Elementary School, (3) the continuing conflict between DeKalb County school officials and the Biracial Committee, and (4) intervenor Johnson's motion to cite defendants with contempt for failing to provide transportation pursuant to the M-to-M program.

1. Heritage is an eighteen-room elementary school, located in the northern section of DeKalb County. It has a capacity of 468 students[1] but for the past few years has had a declining student enrollment. This school year (1977-78) Heritage has a population of 269 students, not including kindergarten and special education students. Projected enrollment for the 1978-79 school year is 247.

The controversy before the court has resulted from defendants' plan to close this school as a regular elementary school and convert it to a special education center for elementary-age students residing in the northern part of the county. The county currently operates Scottdale

[1] The school system determines elementary school capacity, absent any special programs, on the basis of twenty-six students per classroom.

Center as a special education high school. This facility is old and unsatisfactory, and defendants plan to transfer the Scottdale program to Margaret Harris Center, which is now serving as a special education center for elementary-age children in the northern portion of the county. Heritage has been chosen as the recipient school for the existing Margaret Harris program.

Plaintiffs and the Biracial Committee[2] oppose the decision to close Heritage, alleging that it will adversely affect a successful majority-to-minority (M-to-M) transfer program currently in operation there.[3] Nineteen students are presently enrolled in that program, and Heritage is the only school in the northern part of the county with substantial M-to-M participation. A spokesperson for the parents of the M-to-M students indicated that she had made an extensive effort to recruit black students, that black parents had visited a number of schools before selecting Heritage, that Heritage was selected primarily for its size and special reading, math and tutoring programs, and that the Heritage community had been receptive to the M-to-M students. She also expressed concern that if Heritage is closed, these M-to-M students will again have to adapt to a new school and that for this reason some might not continue to participate in the program. Plaintiffs and the Biracial Committee assert that other elementary schools in the northern portion of the county, which do not have M-to-M programs, are

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[2] Pursuant to the court's November 3, 1976 order, defendants presented the proposed zone changes, which would result from the conversion of Heritage, to the Biracial Committee on April 3, 1978. The Committee rejected the changes stating that Heritage's current use should not be altered.

[3] Plaintiffs and the Biracial Committee oppose only the choice of Heritage as the recipient school for the special education program. They do not oppose, and in fact support, the decision to close the Scottdale Center.

operating significantly below capacity and would be appropriate choices as the recipient school for the special education center. They therefore contend that closing Heritage, which might otherwise be permissible, has an impermissible effect upon the M-to-M program.

Defendants contend that the conversion of Heritage will not have a racial impact. They note that the M-to-M students will be able to attend either Oakgrove or Hawthorne, the schools to which the Heritage students will be transferred, or any other schools they choose under the M-to-M program. They also note that the reading and math facilities are the same at the elementary schools and that although tutoring services provided by the community may not already exist at Oakgrove or Hawthorne, such assistance is always encouraged.

Defendants also explain that although certain other elementary schools in that portion of the county are severely under capacity, after examination of all factors, Heritage remains the only sensible choice for conversion to a special education facility. Heritage has eighteen classrooms and defendants have determined that approximately that number will be required in the new center. All of the other under-capacity schools which were considered have at least twenty-three rooms. Defendants contend that to convert any of these larger schools would be an uneconomic use of taxpayer money. Defendants also note that some of the other schools which appear to be underutilized actually are housing special programs which require more space per child than the county usually allots. Further, at least two of the schools which are currently under capacity appear to be destined for major changes in enrollment due to their proximity to the MARTA line and expected new housing developments or in the event of a transition from "singles" apartments to family units. Finally, defendants argue that Heritage is in an ideal location for a special education center, which relies upon volunteer services, since it is

near other elementary schools and a high school and is located in the midst of a single-family dwelling residential community.

On the basis of the foregoing testimony, the court concludes that closing Heritage Elementary School to regular students will not have an impermissible effect on the M-to-M program, and, thus, on the process of desegregation of the county school system. The choice of Heritage over other under-capacity schools as the recipient school for the special education center, in the opinion of the court, is justified by its size and location and by the fact that to close any of the other schools would not be economical in terms of room usage or wise in view of possible future increases in student enrollment. Since the M-to-M students now attending Heritage will be able to transfer to Oak Grove or Hawthorne, along with their white classmates, and will have available to them essentially the same learning tools as they had at Heritage, the court concludes that the disruption in the program is not of legal significance. Accordingly, defendants' motion to change attendance zones is hereby GRANTED.

2. Also before the court are plaintiffs' and the Biracial Committee's contentions that the proposed construction of eight additional classrooms at the predominantly black (96%) Flat Shoals Elementary School will violate the court's June 12, 1969 order. That order states, "To the extent consistent with the proper operation of the system, the county board will, in locating and designating new schools, in expanding existing facilities, and in consolidating schools, do so with the objective of eradicating segregation and perpetuating desegregation." Plaintiffs argue that the Flat Shoals expansion is designed to contain the growing population of black students residing in the Flat Shoals district within that school zone and that such containment is contrary to the instructions of this court. Plaintiffs also allege that additional rooms are unnecessary at Flat Shoals inasmuch as three predominantly white schools located nearby have additional space.

Flat Shoals, which is located in the southern portion of DeKalb County, currently has twenty-seven regular classrooms and two mobile unit classrooms. Its enrollment is approximately 710 children, not including those enrolled in the special education and kindergarten programs.[4] Defendants have testified that the eight-room addition, which will be in the form of two pods containing four classrooms each, is not intended to confine black students to a predominantly black school but, rather, is to provide the existing student body with a better environment for learning.[5] Assistant Superintendent Joseph Renfroe testified for defendants as to the intended uses of the additional rooms. Two of the classrooms will replace the two mobile units presently operating at Flat Shoals. Another of the new rooms will be used for the kindergarten program which is being greatly expanded as the result of an increase in state funding. Three of the rooms will be used in connection with the county's special education program, another will be used as a reading and math lab and the final one will serve as a "multi-purpose" room. Defendants also note that the rooms will be fully air-conditioned and will have modern equipment and furnishings.

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[4] Defendants were before this court in September, 1977, as a result of a drastic and unexpected increase in the student enrollment of Flat Shoals which created severe overcrowding at that facility. At that time the court approved the installation of two portable classrooms and change of attendance zones which zoned approximately 130 students out of the Flat Shoals district.

[5] Defendants also make much of the fact that these eight classrooms will not be used to bring any new students into Flat Shoals who do not now reside in that school zone. Clearly the court would not permit such a change.

While the court recognizes the concerns expressed by plaintiffs and the Biracial Committee on this matter, it cannot conclude, on this set of facts, that defendants' plan to construct these additional classrooms at Flat Shoals violates the June 12, 1969 order. However, to insure that this expansion never serves to contain the black student population in the Flat Shoals school, the court DIRECTS that the additional rooms be used only for those purposes that were stated to the court. Since the court is aware of the difficulties in determining at this point the precise number of special education classrooms which will be needed at Flat Shoals, it will allow defendants a certain amount of leeway in the allocation of the use of rooms as between special education classes and special learning laboratories. In no instance, however, are any of the new rooms to be used to house, or to permit the housing of, additional sections of any grade level.[6] The court will not condone additions to Flat Shoals which are designed, or will serve, to keep the growing black school population within the existing attendance zones. In the event the Flat Shoals enrollment continues to climb, and all indications are that it will, the court recommends that defendants seriously consider alternatives to further construction, such as alterations in attendance zones, and, possible, some form of busing, in order to remedy the overcrowding which is bound to occur and to promote desegregation in the county schools. In considering additions to other predominantly black schools in the county, defendants are advised to keep this admonition in mind.

3. The next issue to be addressed is the Biracial Committee's request that the court establish certain guidelines delineating the authority of the Committee.

[6] The three rooms being built to replace the mobile units and to house the kindergarten classes are, of course, excepted from this restriction.

Elaine Davis, testifying on behalf of the Committee, cited as points of contention between the parties the fact that defendants have failed to request the Committee's approval of their actions, failed to follow its (the Committee's) recommendations, and continued to refuse to provide it with pertinent information.

As the court explained at the hearing on this matter, the Biracial Committee has no authority to order defendants to take or to forbid them from pursuing any specific course of action. Further, the court has no power to grant the Committee such authority. On the other hand, the Biracial Committee has complete authority to inquire into all matters involving the DeKalb County school system in which there are racial overtones. The Committee should investigate any problems it pinpoints, make recommendations to defendants, and seek relief in the court if it is not satisfied with defendants' response. The court INSTRUCTS defendants to furnish the Committee with whatever information it requests in connection with matters having racial overtones,[7] and, to the extent that defendants assert that the order creating the Biracial Committee gave it authority to oversee only certain race-related matters, defendants are to consider that order modified. Finally, the parties are cautioned that the court does not want to be plagued with this problem any further.

4. The final issue before the court is intervenor's motion to cite defendants with contempt for their failure to provide transportation for her child pursuant to the M-to-M program. On November 3, 1976, this court entered an order which provided:

[7] Defendants are advised that the court will frown upon standard refusals to provide information on the ground that the question has no racial overtones.

(1) The M-to-M program [is to] be modified so that any student may transfer from a school where his race is in the majority to any other school within the county in which his race is in the minority. Space must be made available in the receiving schools for transferees who shall be given priority for space over other new students . . . . (5) Transportation shall be provided at the expense of the school system to any M-to-M student who so requests and who lives more than one mile from the receiving school. (6) These changes in the M-to-M program shall be implemented for transfers beginning in the 1977-78 school term. Students wishing to participate in the program for the remainder of the '76-77 school term, may transfer to a school which qualifies under the provisions of this order and in which there is space available. Transferees must provide their own transportation for the balance of the 1976-77 school term.

Intervenor is a white resident and citizen of DeKalb County and the parent of a minor child presently enrolled as an M-to-M student at Meadowview Elementary School, a predominantly black school in the county school system. Because she lives more than one mile from Meadowview, intervenor has requested that defendants provide her child with transportation to school in accordance with the court's order.

Defendants refuse to provide such transportation, however, and contend that the issue before the court does not relate to their refusal to provide transportation under the M-to-M program but "to the question of whether Intervenor can use the M-to-M program as a guise for obtaining transportation not otherwise available . . . under the special education program of the DeKalb County School System." Defendants assert that the child

in question is a student in the General Learning Disability-Educable Program ("GLD-E") operated by DeKalb County, that she was enrolled in the GLD-E class at Flat Shoals Elementary School, and that when that class was transferred to Meadowview, she chose to remain with it, although transportation to Meadowview was not available for her under the special education program. After intervenor submitted applications to defendants for transportation to Meadowview under the special education and M-to-M programs, defendants advised her that transportation was not available to Meadowview but offered to transport the child to any of three other schools in the system. Two of these schools were predominantly black, which was one of the main reasons advanced by intervenor for enrolling her child at Meadowview under the M-to-M program. Intervenor has rejected this offer and continues to enroll her child in the Meadowview program. Defendants, therefore, argue that they have not violated the court's November 3, 1976 order regarding mandatory transportation for M-to-M students.

The court disagrees. The language of the order is quite clear -- "Transportation shall be provided at the expense of the school system to any M-to-M student who so requests and who lives more than one mile from the receiving school." Intervenor's child is an M-to-M student, enrolled at predominantly black Meadowview. She lives more than one mile from the school and she has requested that defendants provide her with transportation. Although this child may not have been one of the intended beneficiaries of that provision, she is clearly within the letter of the law, and, until such time as the order is modified,[8] defendants must comply with its

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[8] The court's November 3, 1976 order provided: "Defendants may seek modification of [the provision requiring that they provide transportation] if, based on the number of students electing to exercise M-

(continued...)

terms. In view of the particular facts before it, however, the court DIRECTS only that defendants compensate intervenor for the costs of her child's transportation after May 15, 1978. Intervenor's requests, presented at the hearing on this subject, for compensation for her past transportation charges and for actual transportation for her child are DENIED at this time. The court INSTRUCTS the parties to discuss this situation further to see if some agreement can be reached and to return to the court with this problem only if they are unable to resolve it after reasonable negotiations.

In sum, plaintiff's motion for supplemental relief is DENIED, and defendant's motion to allow a change of attendance zones is GRANTED. Intervenor's motion to hold defendants in contempt is DENIED, but defendants are DIRECTED to compensate intervenor for the costs of transporting her child to Meadowview after May 15, 1978.

SO ORDERED, this 23rd day of May, 1978.

/s/
NEWELL EDENFIELD
United States District Judge

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[8] (...continued)
to-M transfers and the receiving schools chosen, a workable plan of transportation proves impossible." Defendants have not sought any modification of the transportation provision, however, and the court declines to alter or amend that order on its own motion.

Supreme Court, U.S.
FILED
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(5)

No. 89-1290

IN THE
Supreme Court of the United States
OCTOBER TERM, 1989

ROBERT R. FREEMAN, *et al.*,
Petitioners,

v.

WILLIE EUGENE PITTS, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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9pp

TABLE OF AUTHORITIES

Cases	Page
Morgan v. *Nucci*, 831 F.2d 313 (1st Cir. 1987)	4
Pasadena City Bd. of Ed. v. *Spangler*, 427 U.S. 424 (1976)	4, 7
Robinson v. *Parrish*, 720 F.2d 1548 (11th Cir. 1983)	3
Swann v. *Board of Education*, 402 U.S. 1 (1971)	7

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REPLY BRIEF OF PETITIONERS

As the Court can determine by examining the opinions of the Eleventh Circuit and the district court, respondents' arguments in opposition to the petition focus on a factual setting that bears no resemblance to the facts of this case. Indeed, respondents' cavalier restatement of the facts and the legal holdings of the decisions below render those decisions virtually unrecognizable. On the crucial issue of whether the petition should be granted, respondents do not deny the existence of an acknowledged conflict among the circuits on the first question presented nor the importance of both questions. To the contrary, their revisionist approach to the facts is an implicit concession that if the legal issues are properly presented—and they are—then review by this Court is warranted.[1]

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[1] Petitioners' reading of the decisions below is supported by the decision of the National School Boards Association (NSBA) to file

1. The first issue presented is whether petitioners properly were barred from obtaining a finding of unitariness with respect to student assignment solely because other aspects of the school district's operations, in particular, faculty and staff assignment, had not simultaneously achieved unitary status for a period of three years. See Pet. i. Respondents, for their part, do not dispute that the question presented is an important one or that there is a conflict on that issue. Rather, respondents' *only* argument in opposition to the petition is that the question "is simply not presented by this record" (Opp. 16) because "the [district] court found that DCSS still had not achieved 'maximum practical desegregation' with respect to student assignment at the time of trial." Opp. 7, citing Pet. App. 47a.

Turning to the page of the district court's opinion cited by respondents, it becomes clear that the district court in fact reached precisely the opposite conclusion:

> this court finds that the DCSS has achieved maximum practical desegregation as of the 1986-1987 school year. . . . The DCSS has become a system in which the characteristics of the 1954 dual system have been eradicated, or if they do exist, are not the result of past or present intentional segregative conduct by defendants or their predecessors.

Pet. App. 47a; see also *id.* at 44a ("the court . . . finds that defendants' actions achieved maximum practical desegregation from 1969 to 1986"). Based on these findings, the district court concluded that "the DCSS is a unitary system with regard to the area[] of student assignment" (*id.* at 71a) and accordingly, held that it

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a brief *amicus curiae* in support of the petition. The Association, which will not take a position on the merits of these issues (NSBA *Amicus* Brief, 9), has determined, based on its neutral assessment of the legal issues, that the decision below presents two questions of exceptional importance concerning the proper standards for determining when a school system has achieved unitary status.

would "order no further relief" with respect to student assignment. *Id.* at 72a.

Respondents did not challenge the district court's factual findings, and the court of appeals did *not* overturn those findings as clearly erroneous. See Pet. App. 11a, 18a-19a. Instead, the court of appeals, *as a threshold matter*, "reject[ed] the First Circuit's ruling which permits school systems to achieve unitary status incrementally." *Id.* at 15a-16a. Thus, while the Eleventh Circuit acknowledged and affirmed the district court's factual finding that "no evidence [exists] that the school system's previous unconstitutional conduct may have contributed to [current] segregation" in student assignment (Pet. App. 18a), that factual finding was not relevant under the legal standard articulated by the court. *Id.* at 13a-14a.[2]

In the Eleventh Circuit's view, the "district court erred" (Pet. App. 13a) in holding that the DCSS had achieved "unitary status" in student assignment—not because that conclusion was factually incorrect—but because, as a matter of law, unitary status can be achieved only "[i]f the school system fulfills all six [*Green*] factors *at the same time* for several years . . . ." *Id.* at 14a.

---

[2] Respondents' arguments are based largely on earlier factual statements of the district court, which respondents assert are binding as "law of the case." Opp. 3 n.3, 15 n.14, 16. However, the law of the case doctrine in the Eleventh Circuit permits district judges to reexamine and revise prior factual findings in an ongoing case:

> To hold that a district court must rigidly adhere to its own rulings in an earlier stage of a case would actually thwart the purpose of the doctrine. New developments or further research often will convince a district court that it erred in an earlier ruling, or the court may simply change its mind.

Robinson v. *Parrish*, 720 F.2d 1548, 1550 (11th Cir. 1983). To the extent that earlier rulings of the district court contain contrary statements, the only factual findings relevant to this petition are those contained in the decisions in the appendix to the petition. Respondents' suggestion that the earlier statements are binding is both misleading and flatly incorrect.

Because the petitioners had not achieved unitary status with respect to all *Green* factors, the Eleventh Circuit held that petitioners had an ongoing obligation to "gain and maintain a desegregated student population." *Id.* at 19a.

In sum, the Eleventh Circuit acknowledged that its decision regarding "incremental" approaches to unitariness is in square conflict with the First Circuit's decision in *Morgan* v. *Nucci*, 831 F.2d 313 (1st Cir. 1987). Putting aside their desire to rewrite the facts, respondents, for their part, dispute petitioners' claim that the holding in *Morgan* and the analysis in this Court's decision *Pasadena City Bd. of Ed.* v. *Spangler*, 427 U.S. 424 (1976), cannot be reconciled with the Eleventh Circuit's threshold analysis. See Opp. 12 n.9. That, by itself, is sufficient to warrant review by this Court of this case.[3]

2. The second question presented is whether a formerly *de jure* school system which had achieved effective desegregation in student assignments is nevertheless obligated to remedy the effects of demographic changes on student assignment, where the demographic shifts were completely beyond the school district's control. Again, rather than address whether this question is worthy of review, respondents attack the district court's factual

[3] The Court currently has pending before it a petition in *Board of Education* v. *Dowell*, No. 89-1080 (filed Jan. 3, 1990), which raises related issues concerning the proper approach to determine whether a school system is unitary and, if so, what the effect of that determination is. The incremental unitariness issue presented in this case is logically precedent to the issues in *Dowell* because the latter issues can only be addressed once the Court resolves the threshold question of incrementalism presented in this case. Thus, if the Court grants the petition in *Dowell*, it should grant this petition as well so that the various components of the unitariness inquiry could be resolved simultaneously. Even if the Court were to deny the petition in *Dowell*, however, the issue presented here requires resolution now for the reasons stated in the Petition and by the National School Boards Association in its brief as *amicus curiae* in support of the petition.

findings, asserting that "there is strong reason to doubt" that the current distribution of students "was caused solely by residential factors." Opp. 19.

At the outset, respondents' current skepticism regarding the "cause" of segregation was not embraced by respondents or by the district court at the time of trial. Indeed, the district court noted that "[respondents] concede that the racial segregation in DeKalb County is the result of demographic shifts." Pet. App. 34a. In addition, the district court also made a clear factual finding that the demographic changes had the effect of increasing segregation in student assignment and that "[t]he rapid population shifts in DeKalb County were not caused by any action on the part of the DCSS." *Id.* at 44a.

The district court's conclusion that current imbalances in student assignment were caused by demographic changes and not by any conduct of petitioners could not be clearer:

> Based upon the dramatic effect the implementation of the June, 1969 order had on eradicating the vestiges of the prior dual system, the DCSS' continuing efforts to battle resegregation . . ., the absence of any persuasive evidence indicating that the actions of the DCSS in any way promoted the resegregation that occurred in the County, and the evidence that indicates that other efforts by the DCSS would not have effectively stopped or even slowed the rapid demographic changes that brought residential segregation to the County, this court finds that the DCSS has achieved maximum practical desegregation . . . .

Pet. App. 46a-47a. Respondents did not attack these factual findings in the court of appeals and their eleventh hour attempt to disavow them provides no basis to deny the petition.[4]

[4] Respondents' attempts to revise the factual record are based on nothing more than speculation: respondents argue that "it is impos-

Moreover, the Eleventh Circuit's holding with regard to the causation issue did not refute, in any way, the district court's factual findings. To the contrary, the court of appeals accepted the conclusion that increasing segregation in student assignment resulted from shifting demographic patterns beyond the control of petitioners. However, the Eleventh Circuit squarely "reject[ed] the district court's refusal to require the DCSS to eradicate segregation caused by demographic changes." Pet. App. 20a. According to the Eleventh Circuit, "a school system that has not achieved unitary status"—as measured by all six *Green* factors at the same time for several years—"must take affirmative steps to gain and maintain a desegregated student population." *Id.* at 19a. The "fact that the DCSS achieved racial parity in the area of student assignment" (*id.* at 20a) was irrelevant to the court of appeals' analysis; until unitary status was reached in all respects, the school board was required to take "affirmative steps" to remedy all imbalances in student assignment, even those caused by shifting demographic patterns. *Id.* at 19a.

Respondents make no effort to explain how the decision below can be squared with this Court's holding in *Spangler* that:

> Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system.

Pasadena City Bd. of Ed. v. *Spangler*, 427 U.S. 424, 436 (1976) (*quoting Swann* v. *Board of Education*, 402 U.S. 1, 31-32 (1971)). In seeking to improve the racial balance in the schools, the decision below simply reads the "causation" requirement out of the remedial stage of desegregation litigation. In doing so, it significantly expands federal authority over *de facto* segregation and undermines the role of state and local officials. Given the large number of school districts that remain under federal court supervision, especially in the Eleventh Circuit, the question presented in this case—which involve the most basic principles of "unitariness" litigation—clearly warrant review at this time by this Court.

CONCLUSION

For the foregoing reasons and those stated in the peition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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March 23, 1990

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sible to know what would have happened to this [residential housing] pattern if busing had been implemented in 1969 or at any point thereafter." Opp. 20. Such speculation regarding the effects of remedial programs which were not chosen—and which were not sought by respondents—was specifically rejected by the district court. Pet. App. 44a. Instead, the district court simply concluded that because the Constitution does not mandate racial balance (Pet. App. 46a), the petitioners could not be held liable for segregation in school assignments that was caused by demographic shifts and not by "the past or present intentional segregative conduct" of petitioners. *Id.* at 47a.

(6)

No. 89-1290

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IN THE

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OCTOBER TERM, 1990

ROBERT R. FREEMAN, *et al.*,
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v.

WILLIE EUGENE PITTS, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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SUPPLEMENTAL BRIEF OF PETITIONERS

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SUPPLEMENTAL BRIEF OF PETITIONERS

The recent Fifth Circuit decision in *Flax v. Potts*, 915 F.2d 155 (1990) bears directly upon and further enhances the importance of the questions presented in the petition in this case, which is being held pending the disposition on the merits of *Board of Educ. of Oklahoma City* v. *Dowell*, No. 89-1080. The Fifth Circuit in *Flax* confronted the same two issues presented in the petition: first, whether a school district under a desegregation order can be "barred from obtaining a finding of unitariness" on the ground that "a school system cannot achieve unitary status *incrementally*" (Pet. i; 915 F.2d at 158 (emphasis added)); and, second, whether a school district that has "achieved effective desegregation . . . is nevertheless obligated to remedy the segregative effects of massive demographic changes . . . completely beyond the school district's control." Pet. i; see 915 F.2d at 161-62.

Like the First and Tenth Circuits, the Fifth Circuit answered both questions in the negative. In doing so, the court specifically recognized and rejected the Eleventh Circuit's contrary holdings in this case. Thus, after the Court disposes of *Dowell*, it should grant this petition in order to resolve the growing conflict on the discrete issues relating to the scope of federal remedial authority in a desegregation action which are presented by the decision below.

CONCLUSION

For the foregoing reasons, and those stated in the petition and in the petitioner's reply brief, the petition for a writ of certiorari to the United States Court of Appeals for the Eleventh Circuit should be granted.

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Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN SUPPORT OF THE PETITION FOR CERTIORARI ON BEHALF OF GEORGIA SCHOOL BOARDS ASSOCIATION, INC., AMICUS CURIAE

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TABLE OF CONTENTS

Page No.

TABLE OF AUTHORITIES.....ii

INTEREST OF THE AMICUS CURIAE.... 1

SUMMARY OF ARGUMENT..... 3

ARGUMENT..... 5

CONCLUSION.....12

TABLE OF AUTHORITIES

PAGE NO.

CASES

Brown v. Board of Education of Topeka, 892 F2d 851 (10th Cir. 1989)..... 8

Coyle v. Smith, 221 U.S. 559, 580 (1911)..... 11

Dowell v. Board of Education of Oklahoma City, 890 F2d 1483 (10th Cir. 1989), cert. pending, No. 89-1080, 58 LW 3469.. 8

Green v. County School Board, 391 U.S. 430, 435 (1968)..... 5

Morgan v. Nucci, 831 F2d 313 (1st Cir. 1987)..... 4,7

Pasadena City Board of Education v. Spangler, 427 U.S. 424, 436 (1976)..... 4,7

Pitts v. Freeman, 887 F2d 1438 (11th Cir. 1989)..... 5

Quarles v. Oxford Separate School District, 868 F2d 750 (5th Cir. 1989)..... 9

Stell v. Board of Public Instruction of Savannah and County of Chatham, 724 F. Supp. 1384, 1400 (D.C. Ga. 1988, aff'd and remanded, 888 F2d 82 (11th Cir. 1989)..... 9

Texas v. White, 7 Wall. 700, 725 (1869)..... 11

United States v. Overton, 834 F2d 1171 (5th Cir. 1987)..... 9

United States v. Swift & Co., 286 U.S. 106, 119 (1932)..... 9

STATUTES

Constitution of Georgia of 1945, Art. VIII, Sec. I, Par. I..... 3

MNISCELLANEOUS

The Atlanta Journal, Wednesday, Feb. 14, 1990, p. D.4 10

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INTEREST OF THE AMICUS CURIAE

Georgia School Boards Association, Inc. (GSBA), is a nonprofit membership corporation organized under the laws of Georgia. Its Articles of Incorporation

declare that it is to serve as an association of local school boards and other persons interested in education; to render assistance to local board members and administrators; to work cooperatively with other groups and organizations for the improvement of public education; and to provide, publish and otherwise disseminate educational information, literature and services. The Association now represents all 186 local public school boards in Georgia, and is governed by a Board of Directors consisting of representatives from local boards of education throughout the State.

This case involves a question of law which is of significant importance to local boards of public education in the State of Georgia. As one State whose Constitution and laws previously mandated de jure racial segregation in the public

schools (Constitution of 1945, Art. VIII, Sec. I, Par. I), most Georgia local school districts have a vital interest in ascertaining with reasonable certainty when they have eradicated all vestiges of the prior de jure system and achieved unitary status. They equally are interested in being assured that the constitutional principles governing this important question are the same in Georgia as they are in the other forty-nine states of the Union. This case presents an opportunity for this Court to address this issue, and resolve the uncertainty not only for all Georgia school systems, but for school systems all over the Nation.

Both parties have agreed that this brief might be filed without motion.

SUMMARY OF ARGUMENT

In this case, the Court of Appeals for the Eleventh Circuit rejected the

incremental desegregation rule approved in Morgan v. Nucci, 831 F2d 313 (1st Cir. 1987), and arguably recognized by this Court in Pasadena City Board of Education v. Spangler, 427 U.S. 424, 436 (1976). The effect of the decision below is necessarily to prolong the period during which federal courts maintain judicial oversight over formerly de jure school systems. Regardless of which way this issue is resolved, it involves significant questions relating to the role of the Courts in education, as well as what standards should govern desegregation in the public schools. Other Courts of Appeal have recently reached different views of the same issue, i.e., when is unitariness achieved, although in the context of a somewhat different question. Whatever the law may be as finally determined by this Court, it should be the

same in Georgia as it is in Boston, Oklahoma City, or Topeka, Kansas. Considerations of federalism, including the equal footing doctrine, compel this uniformity. The writ of certiorari should be granted.

ARGUMENT

In its decision below, Pitts v. Freeman, 887 F2d 1438 (11th Cir. 1989), the Court of Appeals rejected the doctrine of incremental desegregation, and held that a school district does not achieve unitary status until it has eliminated "all vestiges of its dual system" by fulfilling at the same time all six factors referred to in Green v. County School Board, 391 U.S. 430, 435 (1968), i.e., faculty and staff assignments, transportation, extracurricular

activities, facilities and student assignments, and even then, the Court might conclude for other reasons that the system was still not unitary, for "Application of the Green factors does not strip a district court of its responsibility and ability to consider unique circumstances in each school system." (887 F2d at 1446). Under this rationale, even though the DeKalb County School District had early achieved unitary status with respect to student assignments, because it had failed to do so with respect to faculty and staff, it remained under a continuing duty to "take affirmative steps to gain and maintain a desegregated student population. The DCSS may not shirk its constitutional duties by pointing to demographic shifts occurring prior to unitary status." (887 F2d at 1448). The school district was

specifically ordered on remand to consider pairing and clustering of schools, drastic gerrymandering of school zones, grade reorganizations, and busing "regardless of whether the plaintiffs support such a proposal" (887 F2d at 1450).

This rejection of "incremental desegregation" as the Court below conceded, is directly in conflict with a contrary holding in Morgan v. Nucci, 831 F2d 313 (1st Cir. 1987), and arguably conflicts with this Court's decision in Pasadena City Board of Education v. Spangler, 427 U.S. 424 (1976) (where the Court held that year-to-year adjustments to maintain student racial balance were not required "although it may well be that petitioners have not yet totally achieved the unitary system contemplated. . . for there has been . . . dispute as to the petitioner's complaince with those

portions of the plan specifying procedures for hiring and promoting teachers and administrators" (427 U.S. at 436-437).

Other Courts of Appeal recently have announced somewhat different approaches to determining "unitariness"[1]

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1. In Brown v. Board of Education of Topeka, 892 F2d 851 (10th Cir. 1989), the Court seems to reject unitariness altogether in the sense of recognizing a point at which a system is no longer in the remedy phase and stands in the position whereby anyone complaining against it must prove discriminatory intent. Brown seems to say that as to a formerly de jure system, any condition of racial imbalance at any time thereafter raises a presumption that it is causally related to the prior illegal status, and shifts the burden to the defendant district to prove otherwise, and that the district's actions "have eliminated all traces of past segregation to the maximum extent possible; mere proof that it has not acted illegally is not sufficient, but the district must show that it affirmatively promoted desegregation. In Dowell v. Board of Education of Oklahoma City, 890 F2d 1483 (10th Cir. 1989), cert. pending, No. 89-1080, 58 L.W. 3469, the same Court held that the traditional rules governing dissolution of injunctions, applied in United States v. Swift & Co.,

The result in the DeKalb County School District is that it must once again undertake a restructuring of its student bodies to achieve some sort of a racial balance in school attendance through pairing and busing, which, as another Court in Georgia recently observd, may be a technique designed "to destroy the very school system it is intended to save", Stell v. Board of Public Instruction of Savannah and County of Chatham, 724 F.

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1. continued. . .286 U.S. 106, 119 (1932) (which render it difficult if not impossible in both cases to even get free of a desegregation order) apply to school desegregation cases. On the other hand, Flax v. Potts, 864 F2d 1157 (5th Cir. 1989) and Quarles v. Oxford Separate School District, 868 F2d 750 (5th Cir. 1989) reflect a more flexible standard for achieving unitariness under which present racial disparities do not necessarily raise any presumption, and unitariness permits a school district to thereafter operate free from continuing judicial oversight. See also United States v. Overton, 834 F2d 1171 (5th Cir. 1987), specifically rejecting the Tenth Circuit's rule that formerly de jure systems are subject to perpetual superintendence.

Supp. 1384, 1400 (D.C. Ga. 1988, aff'd and remanded, 888 F2d 82 (11th Cir. 1989).

The incremental desegregation rule is one that reasonable people may differ on. Many of the school board members represented by the amicus curiae undoubtedly would oppose it. Others would approve. On the other hand, even some members of the class represented by plaintiffs disagree with the position taken by plaintiffs before this Court.[2]

Regardless of what the law may ultimately be on this point, it should be the same in DeKalb County, Georgia, as it is in Boston, Massachusetts. "The Constitution, in all its provisions, looks to an indestructible Union, composed of

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2. See The Atlanta Journal, Wednesday, February 14, 1990, p. D.4, headline reading "Blacks in DeKalb Who Oppose Busing Seek Part in Suit".

indestructible States." Texas v. White, 7 Wall. 700, 725 (1869), and under the equal footing principle, ". . . [T]he constitutional equality of the states is esential to the harmonious operation of the scheme upon which the Republic was organized. When that equality disappears, we may remain a free people, but the Union will not be the Union of the Constitution". Coyle v. Smith, 221 U.S. 559, 580 (1911).

In this case, there is no evidence that the deficiencies in DeKalb County's faculty and staff assignment procedures had any causal relationship with respect to the demographic changes in student attendance patterns, and hence this case presents the clear cut issue of which of two divergent doctrines in the circuits should be approved. The question here has profound implications not only for school

desegregation per se, a matter of highest national priority, but also for the role of the judiciary in continued oversight of public education.

CONCLUSION

Conflict in the circuits is one of the "special and important reasons" for the granting of certiorari, under Rule 17 of the Rules of this Court. When the conflict relates not just to some question of private law, the reasons may be attenuated. But here, the conflict relates to a matter of national importance and priority - the issue of when compliance in school desegregation has been achieved so that the goverance of the public school system may be returned to

the school administrators. The writ should be granted.

Respectfully Submitted,

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BRIEF AMICUS CURIAE OF THE NATIONAL SCHOOL BOARDS ASSOCIATION IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	i
INTEREST OF THE AMICUS CURIAE	2
STATEMENT OF THE CASE.....	3
REASONS FOR GRANTING THIS WRIT.....	3

I. The importance of advancing the desegregation efforts of public schools compels this Court to clarify the law on the nature and effect of achieving unitary status.

II. Demographic changes and federal government actions necessitate this Court's immediate guidance on the issues regarding unitariness.

A. Demographic changes may require school districts to modify desegregation plans.

B. School districts need clarification on the effect of a dismissal of a desegregation case in light of the U.S. Department of Justice efforts to reduce its case load.

III. This Court has an opportunity to resolve the issue of what constitutes a unitary

school system and the effect of unitariness at the same time.

ARGUMENT..... 4

I. THE IMPORTANCE OF ADVANCING THE DESEGREGATION EFFORTS OF PUBLIC SCHOOLS COMPELS THIS COURT TO CLARIFY THE LAW ON THE NATURE AND EFFECT OF ACHIEVING UNITARY STATUS.

II. DEMOGRAPHIC CHANGES AND GOVERNMENT ACTIONS NECESSITATE THIS COURT'S IMMEDIATE GUIDANCE ON THE ISSUES REGARDING "UNITARINESS."

A. School districts need clarification as to the effect of a dismissal of a segregation case in light of the U.S. Department of Justice's efforts to "close down" cases in order to reduce its case load.

B. Demographic changes may require school districts to modify desegregation plans.

III. THIS COURT HAS AN OPPORTUNITY TO RESOLVE THE ISSUES OF WHAT CONSTITUTES A UNITARY SCHOOL SYSTEM AND DETERMINE THE EFFECT OF A DECLARATION OF UNITARY AT THE SAME TIME.

IV. CONCLUSION..... 34

APPENDIX

TABLE OF AUTHORITIES

CASES: PAGE

Board of Education of Oklahoma City Public Schools, Independent School District No. 89 v. Dowell 32

Brown v. Board of Education, 347 U.S. 483 (1954)..... 7

Dowell v. Board of Education of Oklahoma City Public Schools, Independent School District No. 89, 890 F.2d 1483 (10th Cir. 1989)..... 12

Green v. County School Board, 391 U.S. 430 (1968).....8, 20

Keyes v. Denver School District No. 1. 463 U.S. 189 (1973)..... 7

Milliken v. Bradley, 433 U.S. 267 (1977).....8, 30

Morgan v. Nucci, 831 F.2d 313 (1st Cir. 1987).....16, 26

Pitts v. Freeman, 887 F.2d 1438, 1445 (11th Cir. 1989)..... 17

Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971)....8, 31

United States v. Overton, 834 F.2d 1176 (5th Cir. 1987).....16, 33

Washington v. Seattle School Dist. No. 1, 458 U.S. 457 (1982)..... 8

OTHER AUTHORITIES:

Education Week June 1, 1988, at 18-19..... 18

G. Orfield, Racial Change & Desegregation in Large School Districts -- Trends through the 1986-1987 School Year, (NSBA Council of Urban Boards of Education, July 1988)..... 22

Remarks of Nathaniel Douglas, Chief, Educational Opportunity Litigation Section, Civil Rights Division, Department of Justice, Conference on Civil Rights Enforcement in the 1990's, July 13-14, 1989..... 19

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF AMICUS CURIAE OF THE NATIONAL SCHOOL BOARDS ASSOCIATION IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

Counsel for both parties have consented to filing of the within brief.

INTEREST OF THE AMICUS CURIAE

The National School Boards Association (NSBA) is a nonprofit federation of this nation's state school boards associations, the District of Columbia school board and the school board of the Virgin Islands. Established in 1940, NSBA is the only major educational organization representing school boards and their members. Its membership is responsible for the education of more than ninety-five percent of this nation's public school children.

School desegregation continues to be one of the most pressing issues in this country. NSBA submits this brief in the belief that the issues presented in this case must be decided so school districts

can be in a better position to address the continuing problem of racial isolation in the schools. In light of today's economic climate, it is important that every child, regardless of race, color, or national origin, be provided equal opportunities in the public schools of this country. It is also imperative that national rules be established so that the residents of all communities throughout the nation can feel that the school board in their community is subject to the same constitutional standards as the boards in every other community.

STATEMENT OF THE CASE

Amicus incorporates by reference the statement of the case in Petitioner's brief herein.

REASONS FOR GRANTING THIS WRIT

I. The importance of advancing the desegregation efforts of public schools

compels this Court to clarify the law on the nature and effect of achieving unitary status.

II. Demographic changes and federal government actions necessitate this Court's immediate guidance on the issues regarding unitariness.

A. Demographic changes may require school districts to modify desegregation plans.

B. School districts need clarification on the effect of a dismissal of a desegregation case in light of the U.S. Department of Justice efforts to reduce its case load.

III. This Court has an opportunity to resolve the issue of what constitutes a unitary school system and the effect of unitariness at the same time.

ARGUMENT

I. The importance of advancing the desegregation efforts of public schools compels this Court to clarify the law on the nature and effect of achieving unitary status.

There are few matters of public policy more important to every member of a community than those involving the desegregation of its public schools.

Changes in student assignment can be enormously disruptive to a community even when motivated by reasons other than desegregation. The decision to close one school, for example, is always made with great care because it will undoubtedly result in complaints from students, parents and faculty. Even members of the community who have no current direct relationship with the schools become very emotional on this issue because of the ties they feel to "their school." Those problems are multiplied manyfold when the board reassigns students at a number of schools for purposes of desegregation. And, unlike the situation in the past, we are now in an era where both white and black parents may be lobbying the board to return to neighborhood schools or, at the least, urging the board to maintain stability in student assignment.

In the case at bar, the court of appeals ruled that until the school district is "unitary" in all respects (not merely in student assignment), the district cannot defend disproportionately minority or majority schools on the basis that there was no causal connection between racial makeup and the unconstitutional conduct. Under the decision, the district must affirmatively desegregate its schools and consider using methods including busing, "regardless of whether the plaintiffs support such a proposal." This may, indeed, be an appropriate directive. But, given the broad base of support for a neighborhood student assignment plan, the court of appeals' decision should be founded on a national standard and not merely on the ruling of one court of appeals.

It is imperative that the public perceive that decisions of the local school board and of the federal courts are based on the "law of the land." Currently, there is no "law of the land" relative to the question of when a formerly de jure segregated school system becomes "unitary."

This Court has ruled that state mandated segregation violates the Constitution, Brown v. Board of Education, 347 U.S. 483 (1954), and has expanded the coverage of the fourteenth amendment to include other forms of de jure segregation. Keyes v. Denver School District No. 1, 463 U.S. 189 (1973). The Court has clarified the obligations of school districts to remedy the effects of de jure segregation: first, by requiring school boards to take an active role in the desegregation process and not

merely rely on student "freedom of choice," Green v. County School Board, 391 U.S. 430 (1968); and second, the Court has ruled on the various methods of desegregation including cross-town busing Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971). The Court has clarified the role of the state in the process. Milliken v. Bradley, 433 U.S. 267 (1977). The Court has also ruled that a state cannot restrict by statute school district efforts to desegregate voluntarily. Washington v. Seattle School Dist. No. 1, 458 U.S. 457 (1982). Of course, none of these areas of the law is simple and because of the variety of factual settings in which the legal issues are presented, nuances have developed with regard to these major legal principles.

But the issues presented to the

Court in this case are, indeed, new and perhaps even more difficult than those of the past. Desegregation decisions are among the most difficult with which school boards must contend. Politically, any course a school board takes is fraught with controversy. Thus, it is important that all the players know the rules.

The National School Boards Association (NSBA) does not have a position on the issues presented in this case, and in the event this Court agrees to hear the case, NSBA will not file a brief on the merits. School board members are not of one mind on the policy issues involved in this case but boards in every formerly de jure school district agree that they need to know the legal parameters in which they are operating in order to work with their communities to

make and enforce effective student assignment policies.

School boards in formerly de jure segregated school systems need to know after their desegregation plans have been implemented for a number of years, what standards the trial court should use in releasing them from further obligations to make changes in system operations. Must they be in compliance with all aspects of the plan for a specified time before being eligible for release from any obligations? Do a district's obligations continue even after a finding of unitary (once the causal connection is broken)?

There are public relations benefits to be gained by a declaration of "unitary," as well as the benefit of being released from the burden of reporting requirements. But undoubtedly

the primary reason that a district seeks "unitary" status is to regain control over the administration of its public schools. School districts need to know the process for achieving "unitary" status and the effect of having achieved that status.

Undoubtedly a number of refinements need to be made in the law regarding the first stage of desegregation, i.e., the stage leading up to and including the approval of the desegregation plan. But most districts that have been under desegregation plans for a number of years are now in the second stage for which this Court has not developed the major legal principles.

Amicus submits that districts urgently need the answers to two questions: First, when does the duty of a formerly de jure segregated school

district to actively remedy racial imbalance end? That is the issue here. The second question is when, if ever, formerly de jure segregated school districts regain the right to make student assignment decisions without regard to the effect on the court-ordered desegregation plan? That issue is squarely presented in the case of Dowell v. Board of Education of Oklahoma City Public Schools, Independent School District No. 89 890 F.2d 1483 (10th Cir. 1989), petition for cert. filed, 58 U.S.L.W. 3469 (U.S. Jan. 3, 1990) (No. 89-1080) in which Amicus has also filed a brief in support of the petition for certiorari. That issue is also partially presented here because the dispute in this case did not arise until the school board successfully sought a declaration from the district court that it had

achieved "unitariness" in the area of student assignment. The board argues that because it is unitary in student assignment, it is free to pursue race neutral student assignment policies, provided its actions are not taken for the purpose of segregation. Plaintiffs argue that the board is not free to make changes in student assignment because the school system is not "unitary" in all six "Green" factors.

School boards like the DeKalb County School system have a difficult conflict before them in making decisions on student assignment. One set of parents believe that a system of neighborhood schools is the most appropriate way to assign students to schools and, since the district was found "unitary" as to student assignment, they argue that the district is free to maintain a system of

neighborhood schools. Another set of parents asserts that the board must continually make changes until the entire system is "unitary,"

What Amicus seeks is stability. If the Court rules that school districts that retain aspects of the former dual school system are obligated to alter student assignment schemes to remedy de facto segregation, so be it. At least then each school board knows that its policy considerations must be formulated with this Court's standards in mind. If its obligation cannot be met through the retention of a neighborhood plan, then school districts will have to seek other ways to meet the challenges posed by increasing minority populations. On the other hand, if this Court determines that a school system can be held "unitary" in student assignment, even absent

unitariness in other respects, school boards whose districts have been declared to be "unitary" in student assignment will know that they can now operate their districts without court oversight (provided, of course, that this Court agrees that a declaration of "unitary" results in this flexibility.)

As noted earlier, whatever decision a school board makes in this sensitive area is going to be the subject of controversy. Decision-making is even more difficult if the law is unclear. Where the law is clear and school boards operate within the confines of the law, history has shown that desegregation works. Now that formerly segregated school districts are administered by whole new sets of personnel, there is reason to believe that some stability in the law will lead to stability in

desegregation efforts.

II. Demographic changes and government actions necessitate this Court's immediate guidance on the issues regarding "unitariness."

A number of lower courts have addressed the issue of "unitary." Some establish standards for determining "unitariness" while others find "unitariness" or a lack of "unitariness" without setting forth the standards on which the finding is based. The only uniform finding by these courts is an acknowledgment that the Supreme Court has not ruled on this issue. "Although the Court has produced no formula for recognizing a unitary school system...." Morgan v. Nucci, 531 F.2d 313, 319 (1st Cir. 1987); "Although the Court has produced no formula for recognizing a unitary school system...."; U.S. v. Overton, 834 F.2d 1171, 1177 (5th Cir.

1987); "The Supreme Court has not, however, announced any set list of the conditions a district court judge must observe in a formerly dual school system before declaring that it is unitary. [Citations omitted]." Pitts v. Freeman, 887 F.2d 1438, 1445 (11th Cir. 1989). This case is more straightforward than other cases raising the issue of "unitariness" because the school board does not wish to change the neighborhood student assignment system in its desegregation plan. The board only seeks the right to assign students on a race neutral basis.

But the DeKalb dilemma as to the nature of a finding of "unitariness" is a national dilemma. Because of the federal government's recent action in attempting to reduce its desegregation case load and because demographic changes are altering

the complexion of the schools, many school districts are "between a rock and a hard place." They must make decisions now on whether to seek "unitary" status. In order to do that, they must be aware of the parameters the courts will be looking at in order to prove that the district is now "unitary," and they must know the effect of having achieved that status.

A. School districts need clarification as to the effect of a dismissal of a segregation case in light of the U.S. Department of Justice's efforts to "close down" cases in order to reduce its case load.

In the Spring of 1988 the U.S. Department of Justice announced that it was planning to seek dismissal of more than 200 school district desegregation cases where the districts have fully complied with court-ordered plans for a minimum of three years. Education Week

June 1, 1988, at 18-19. Representatives of the Department of Justice Civil Rights Division of stated that the present Administration plans to continue the process of "close down." Remarks of Nathaniel Douglas, Chief, Educational Opportunity Litigation Section, Civil Rights Division, Department of Justice. From the community standpoint, it is, of course, preferable to be relieved from the jurisdiction of the court so that the board can make decisions based on educational needs of all children and be freed of administrative tasks such as preparing reports to the court and the plaintiffs. Arguably, it is also in the interest of the trial courts to be relieved from the duty of routinely deciding all manner of issues relating to student assignment and other matters included in the desegregation order.

On the other hand, the process of achieving a court order dismissing the case and declaring the district "unitary," is expensive, can cause community anxiety and unrest and can be disruptive of the educational process. For these reasons, left to their own devices, many districts might opt to remain under court order. But as long as the Department of Justice continues to seek dismissals of these cases, the districts are left with the unenviable alternatives of either joining with the Department in seeking dismissal or opposing the Department's action. The latter course is really no alternative at all because the district would have to admit that it is not meeting its obligation to eliminate racial discrimination "root and branch." Green v. County School Bd., 391 U.S. at 438.

Therefore, school districts and, indeed, the Department of Justice, itself need clarification from this Court as to the standards for determining when a district becomes "unitary."

As part of the effort to "close down" its caseload, the Reagan Administration encouraged districts to dismantle their plans and adopt neighborhood student assignment plans. Although DeKalb seeks to retain the student assignment system in its desegregation plan, a number of other school districts seeks a declaration of "unitariness" in order to change the plan. The Reagan Administration dropped some of the Justice Department desegregation lawsuits begun in the previous Administration and changed its position in cases such as that involving the validity of the Washington State

statute which prohibited voluntary busing for desegregation. This "kind of dramatic, high visibility leadership" has resulted in both school officials and members of the public assuming that the era of busing and court-ordered desegregation is over. G. Orfield, Racial Change & Desegregation in Large School Districts -- Trends through the 1986-1987 School Year, (NSBA Council of Urban Boards of Education, July 1988), (hereafter, Orfield Report).

It is unfair to the hundreds of school districts who are under court-ordered desegregation plans for the federal government to lead them to believe that they can freely go into court and be relieved of all obligations to justify future student assignment actions that have a segregative effect -- if, indeed, this Court is going to rule

at some future time that school boards are not free to take such action.

It is counterproductive to wait until after the school district has reassigned its students -- with the concomitant public unrest that such action always causes -- to decide that the action taken must be subjected to a degree of scrutiny that the district may not be in a position to meet. Again, whether such a degree of scrutiny is justified is not the point. The point is that districts are entitled to know the standards now.

B. Demographic changes may require school districts to modify desegregation plans.

NSBA recently conducted a survey of the members of its Council of Urban Boards of Education (CUBE), to which 74% of the members responded. The districts that comprise CUBE are our nation's

largest districts, educating more than four million children in America's urban public schools, 10% of the total public school student enrollment. The survey asked the districts a number of questions about desegregation. In the school systems responding to the survey, non-white students accounted for two-thirds of all students. Only three of the fifty-two school districts surveyed never had a desegregation plan. Forty districts are currently involved in desegregation efforts, fifteen of which are operating under plans different from those originally ordered. As demographics change, school districts are responding by seeking changes in court orders or orders declaring the district unitary. Others are waiting for additional guidance from the courts.

However, school districts of this

size cannot remain static. They must change as circumstances -- such as demographics -- change. The white population is decreasing and the

> school enrollment statistics are telling us about a new, profoundly multi-racial society that neither our political leaders, research community, nor media have yet fully recognized. Teachers and school officials are dealing with a society that has changed dramatically since the time of our grandparents and that is continuing to change very rapidly.
>
> Orfield Report, at 2.

See Appendix for an analysis of racial changes in student populations in 60 largest U.S. cities. Data in the Appendix is derived from Orfield Report, at 4-9.

In absence of guidance from this Court, boards make changes at their peril and in some cases, fail to make changes at their peril. Given the intensity of community feelings on the issue of

desegregation, it is unfair to force school boards to make policy decisions that affect the entire community without a better picture of the legal framework in which they must operate. If the board decides to make changes in its student assignment plan after a finding of "unitariness" in that part of the plan -- opponents point to the court of appeals decision in the case at bar and the decision in Oklahoma City, to argue that the action is illegal. If the board decides to retain its desegregation plan and make changes to reduce racial isolation, opponents point to Morgan v. Nucci, 831 F.2d 313 (1st Cir. 1987), in which the First Circuit Court of Appeals held that the district court cannot impose its own student assignment plan on the Boston public schools if the system has achieved "unitary" status in student

assignments. The court calls the "question of what constitutes unitariness 'the central riddle of the law of school desegregation.' [Citation omitted]" Id.

Unfortunately, when the law is unclear, the debate centers on prognostications as to what the Supreme Court will or will not do rather than on policy issues such as whether "white flight" is the cause of racial isolation in DeKalb County, Georgia, Oklahoma City, or anywhere else or is it caused by a decrease in the white birth rate or by a movement to the suburbs by both whites and minorities? If the cause is white flight, will a return to neighborhood schools reduce that flight? If not, what other means exist for reducing the current racial isolation? If the district is operating under a neighorhood plan, should it opt for a different form of student

assignment plan in order to reduce isolation. All of these issues should be studied in the community in an environment where the basic legal principles are settled. Citizens, courts, and the federal government have argued over the years that local school districts should be left to themselves to effect the management decisions that result in the desegregation of their schools. Who is in a better position than the locally selected and accountable school board to call in the members of the community to discuss these issues that affect all of the community? Who is in a better position to organize citizen involvement in developing alternative assignment plans? Who is in a better position to ensure that teachers and administrators are trained to deal with the myriad problems entailed in the development of an

effective desegregation effort?

Most importantly, who better than the school board is in a position to ensure that the desegregation effort works and is not merely an agonizing and futile exercise? Desegregation plans and plans handled voluntarily and cooperatively, with the full participation of the local school board, administrators, teachers and community leaders, are invested with the potent opportunity of ensuring that the community understands why the action is being taken and is given reason to believe that it has contributed to the plan and stands to lose if the plan fails. A plan developed with the cloud of probable federal court intervention has much less chance of working.

> No single tradition in public education is more deeply rooted than local control over the operation of schools; local autonomy has long been thought essential both to the

> maintenance of community concern and support for public schools and to quality of the educational process...local control over the educational process affords citizens an opportunity to participate in decision-making, permits the structuring of school programs to fit local needs, and encourages experimentation, innovation and a healthy competition for education excellence.
>
> Milliken v. Bradley, 418 U.S. 717, 741-42 (1974).

Citizens in the school districts which have been subject to desegregation orders are urging their school boards to play exactly what this Court has indicated is their traditional role and to take control over the educational process. There also continues to be a demand by parents for neighborhood schools. This Court has indicated some support for neighborhood schools. "All things being equal, with no history of discrimination, it might well be

desirable to assign pupils to schools nearest their homes." Swann, 402 U.S. at 28. The key is determining what is "equal." In the absence of guidance from this Court as to the parameters under which formerly de jure segregated systems must operate, school districts remain in the dark as to who has the final control over student assignment decisions -- the board or the courts.

Amicus urges this Court to tackle these difficult issues now. School boards need guidance and any delay could cause needless harm to the educational process in those communities where the board is delaying action because of a fear of reversal or is taking action only to be reversed after the action has been taken. Unlike other cases, the acts or failures to act in a desegregation case affect an entire generation of young

people. They affect the entire community and its view of the educational system.

III. This Court has an opportunity to resolve the issue of what constitutes a unitary school system and determine the effect of a declaration of unitary at the same time.

Amicus further submits that the timing is right for this Court's intervention into these issues for another reason. Another desegregation case is presently before the Court on a petition for certiorari which raises the issue of the effect of a declaration of unitariness. In the case of Board of Education of Oklahoma City Public Schools, Independent School District No. 89 v. Dowell, the Court of Appeals for the Tenth Circuit held that a formerly de jure segregated school district has the burden of proof to justify any changes in the desegregation plan, even if the district had earlier been held to be

"unitary." The questions of first, when a district is unitary and second, whether the district is then free to make changes in the plan are very closely intertwined. "The elements of a violation and who must bear the burden of their proof are not conceptually distinct from unitary status but are its components; indeed, the contrary assertion is dissembling." United States v. Overton, 834 F.2d 1176 (5th Cir. 1987).

Since it is improbable that a single case will raise both the threshold issue of when a district becomes "unitary" and the companion issue of the effect of a declaration of "unitary," this would seem an appropriate time for the Court to review both issues. Since it is difficult to address one issue without also addressing the other, it may be easier for the Court to resolve both

issues with the benefit of the arguments of the parties to both cases.

IV. Conclusion

Amicus submits that because of the Department of Justice's action in seeking to dismiss numerous cases in their desegregation case load and because of the inconstancy of student demographics, school districts need advice from this Court on the second stage desegregation issues relating to the nature and effect of a declaration of "unitary" status. Because desegregation activities are so compelling, and because school districts are being forced to make decisions even in absence of guidance from this Court, it can almost be said that the content of

this Court's rulings on these issues is less important than the need for the rulings to come now.

Respectfully submitted,

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APPENDIX

CHANGES IN STUDENT ENROLLMENT IN LARGEST SCHOOL DISTRICTS 1967-1986

DISTRICT	TOTAL STUDENT POPULATION CHANGES		WHITE/BLACK CHANGES	
	TOTAL CHANGE	TOTAL % CHANGE	% CHANGE WHITE	% CHANGE BLACK
New York	-155145	-14	-26	8
Los Angeles	-65246	-10	-37	-4
Chicago	-147231	-26	-27	5
Dade Co., FL (Miami)	23679	11	-40	9
Houston ISD	-61886	-24	-37	10
Philadelphia	-92768	-33	-15	5
Detroit	-133331	-46	-32	31
Dallas ISD	-24330	-15	-42	19
Fairfax Co., VA	23955	22	-19	6
Broward Co., FL	37949	40	-9	2
Baltimore	-73916	-38	-17	15
Hillsborough Co., FL	20732	22	-11	1
Memphis	-10314	-8	-24	24
San Diego	-10680	-9	-32	7
Prince Geo. Co., MD	-33476	-25	-55	48
Duval Co., FL	-19143	-16	-12	8
Montgomery Co., MD	-16858	-15	-27	11
Clark Co., NV	32056	51	-11	3

DISTRICT	TOTAL STUDENT POPULATION CHANGES		WHITE/BLACK CHANGES	
	TOTAL CHANGE	TOTAL % CHANGE	% CHANGE WHITE	% CHANGE BLACK
Jefferson Co., KY	-44264	-32	-27	26
Milwaukee	-37936	-30	-37	29
Pinellas Co., FL	14228	19	-4	2
Palm Beach Co., FL	25600	43	-9	-1
Washington, DC	-64281	-43	-4	-1
New Orleans	-24446	-22	-26	21
Orange Co., FL	11325	16	-16	8

DISTRICT	TOTAL STUDENT POPULATION CHANGES		WHITE/BLACK CHANGES	
	TOTAL CHANGE	TOTAL % CHANGE	% CHANGE WHITE	% CHANGE BLACK
Albuquerque	936	1	-6	1
Baltimore Co., MD	-41780	-35	-14	10
Cleveland	-76202	-50	-18	13
Charlotte	-5300	-7	-13	11
Salt Lake	35117	94		
DeKalb Co., GA	-5891	-8	-46	42
Mobile	-8998	-12	-4	3
San Francisco	-32395	-33	-27	-5
Ft. Worth	-17080	-20	-32	11
Atlanta	-47192	-41	-34	33

DISTRICT	TOTAL STUDENT POPULATION CHANGES		WHITE/BLACK CHANGES	
	TOTAL CHANGE	TOTAL % CHANGE	% CHANGE WHITE	% CHANGE BLACK
Columbus	-41843	-39	-21	19
Long Beach	-8019	-11	-48	11
Anne Arundel Co., MD	1807	3	-3	0
Virginia Beach City	24010	62	-9	3
Nashville	-30833	-33	-13	10
Cobb Co., GA	23271	60	-4	2
El Paso ISD	2139	4	-20	2
Jordan, UT	40955	204	-5	0
Austin ISD	21255	54	-34	1
Denver	-34705	-37	-29	8

DISTRICT	TOTAL STUDENT POPULATION CHANGES		WHITE/BLACK CHANGES	
	TOTAL CHANGE	TOTAL % CHANGE	% CHANGE WHITE	% CHANGE BLACK
Boston	-31442	-34	-47	21
Polk Co., FL	8225	16	-2	-1
Fresno USD	-4557	-7	-28	2
Wake Co., NC	33555	137	NA	NA
Jefferson Parish, LA	2218	4	NA	NA
Tucson	3453	7	-11	1
Newark	-25151	-32	-12	-6
Cincinnati	-34993	-40	-19	19
Caddo Parish, LA	-6017	-10	NA	NA
Portland	-27025	-34	-16	7
Oakland USD	-17354	-25	-23	10

DISTRICT	TOTAL STUDENT POPULATION CHANGES		WHITE/BLACK CHANGES	
	TOTAL CHANGE	TOTAL % CHANGE	% CHANGE WHITE	% CHANGE BLACK
Greenville	-4868	-9		
Indianapolis	-57989	-53		
TOTAL	-1188420	-15		
AVERAGE	-20490	-01.8		

Supreme Court, U.S.
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No. 89-1290

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

ROBERT R. FREEMAN, *et al.*,
Petitioners,

v.

WILLIE EUGENE PITTS, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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JOINT APPENDIX

(Volume I, pp. 1-430)

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TABLE OF CONTENTS

VOLUME I

	Page
Relevant Docket Entries	1
Complaint	41
Answer	49
Order (5/12/69)	61
Order (11/3/76)	71
Order (1/23/77)	96
Order (4/18/77)	98
Order (5/6/77)	101
Order (10/6/77)	104
Order (12/27/77)	113
Order (5/23/78)	117
Order (9/6/78)	127
Order (10/25/78)	132
Pitts v. *Cherry*, 598 F.2d 1005 (5th Cir. 1979)	133
Order (5/8/79)	138
Order (9/8/83)	151
Order (2/22/84)	162
Order (7/11/84)	170
Pitts v. *Freeman*, 755 F.2d 1423 (11th Cir. 1985)	174
Order (10/31/85)	183
Order (11/7/86)	200
Order (6/30/88)	202
Order (8/11/88)	251
Defendant's Exhibit 2	253
Defendant's Exhibit 3	255
Defendant's Exhibit 4	256
Defendant's Exhibit 5	257
Defendant's Exhibit 6	258
Defendant's Exhibit 11	259
Defendant's Exhibit 13	260
Defendant's Exhibit 19	261
Defendant's Exhibit 20	262
Defendant's Exhibit 24	263
Defendant's Exhibit 25	264
Defendant's Exhibit 32	267
Defendant's Exhibit 41	269
Defendant's Exhibit 60	424
Defendant's Exhibit 61	425

TABLE OF CONTENTS—Continued

	Page
Defendant's Exhibit 73	427
Defendant's Exhibit 216	428
Defendant's Exhibit 222	430

VOLUME II

Plaintiff's Exhibit 22	431
Plaintiff's Exhibit 23	438
Plaintiff's Exhibit 24	450
Plaintiff's Exhibit 25	465
Plaintiff's Exhibit 26	473
Plaintiff's Exhibit 28	476
Plaintiff's Exhibit 32	481
Plaintiff's Exhibit 34	483
Plaintiff's Exhibit 40	484
Plaintiff's Exhibit 42	491
Plaintiff's Exhibit 44	493
Plaintiff's Exhibit 45	495
Plaintiff's Exhibit 47	497
Plaintiff's Exhibit 66	501
Plaintiff's Exhibit 94	504
Plaintiff's Exhibit 96	509
Plaintiff's Exhibit 97a	511
Plaintiff's Exhibit 97b	512
Plaintiff's Exhibit 97c	513
Plaintiff's Exhibit 98a	514
Plaintiff's Exhibit 98b	515
Plaintiff's Exhibit 98c	516
Plaintiff's Exhibit 99	517
Plaintiff's Exhibit 100	518
Plaintiff's Exhibit 101a	519
Plaintiff's Exhibit 101b	520
Plaintiff's Exhibit 102a	521
Plaintiff's Exhibit 102b	522
Plaintiff's Exhibit 103a	523
Plaintiff's Exhibit 103b	524
Plaintiff's Exhibit 104	525
Plaintiff's Exhibit 105	526
Plaintiff's Exhibit 106	527

TABLE OF CONTENTS—Continued

	Page
Plaintiff's Exhibit 107a	528
Plaintiff's Exhibit 107b	529
Plaintiff's Exhibit 108a	530
Plaintiff's Exhibit 108b	531
Plaintiff's Exhibit 108c	532
Plaintiff's Exhibit 109a	533
Plaintiff's Exhibit 109b	534
Plaintiff's Exhibit 109c	535
Plaintiff's Exhibit 110	536
Plaintiff's Exhibit 111	537
Plaintiff's Exhibit 113	538
Plaintiff's Exhibit 114	539
Plaintiff's Exhibit 123a	540
Plaintiff's Exhibit 123b	542
Plaintiff's Exhibit 123c	543
Plaintiff's Exhibit 123d	544
Plaintiff's Exhibit 124b	545
Plaintiff's Exhibit 124c	546
Plaintiff's Exhibit 125	547
Plaintiff's Exhibit 128	548
Testimony of Dr. David Armor Trial Transcript, Vol. V, pp. 3-143	552
Opening Statement of Gary Sams Trial Transcript, Vol. I, p. 7	658
Testimony of William Ferguson Simpson Trial Transcript, Vol. I, p. 147	658
Testimony of Franklin Dean Grant Trial Transcript, Vol. I, p. 232	659
Testimony of Bobby Nelson Stephens Trial Transcript, Vol. II, pp. 32-33	660
Testimony of Robert L. Tucker Trial Transcript, Vol. II, pp. 65-69	661
Testimony of Mary Durr Trial Transcript, Vol. II, pp. 156-61	664
Testimony of Wayne Cohen Huey Trial Transcript, Vol. III, p. 144	669
Testimony of Ruel Morrison Trial Transcript, Vol. III, pp. 199-202	669

TABLE OF CONTENTS—Continued

	Page
Testimony of Ernest Lamar Hallford Trial Transcript, Vol. III, pp. 217-18	672
Testimony of Vivian McMillan Trial Transcript, Vol. IV, pp. 10-16	674
Testimony of Fannie H. Tartt Trial Transcript, Vol. IV, pp. 173-76	679
Testimony of Dr. Bill Strain Trial Transcript, Vol. V, pp. 175, 207-08, 212-15	682
Testimony of Dr. Robert Freeman Trial Transcript, Vol. VI, pp. 61-62, 75-76, 131-33, 154-56	687
Testimony of Phil McGregor Trial Transcript, Vol. VII, pp. 4-28	694
Testimony of Marcia Borowski Trial Transcript, Vol. VII, pp. 83-84, 91, 93-96, 99-103	711
Testimony of Lila Parker Trial Transcript, Vol. VII, pp. 136-41	719
Testimony of Roger Mills Trial Transcript, Vol. VII, pp. 190-94, 200-08	723
Testimony of Stephen Parker Cole Trial Transcript, Vol. VIII, pp. 8-81	733
Testimony of Robert A. Dentler Trial Transcript, Vol. IX, pp. 24-124 Trial Transcript, Vol. X, pp. 113-122	785
Testimony of Frances Pauley Trial Transcript, Vol. X, pp. 147-51, 153	860
Testimony of Melvin Johnson Trial Transcript, Vol. XI, pp. 35, 133-34, 137-44	864

DOCKET ENTRIES

DATE	PROCEEDINGS
1968	
July 5	Complaint filed. Summons issued & delivered to U.S. Marshal.
11	Marshal's return of service executed as to DeKalb Co. Brd. of Ed., Dr. Jas. H. Hinson, Jr., Jim Cherry, Supt. Schools 7-9-68, filed.
29	ANSWER of Defendants, filed.
Sept. 27	Pltfs' motion for preliminary injunction, with memo. in support filed.
	Order that defts. show cause at 2:00 p.m., Oct. 10, 1968, why pltfs' motion for preliminary or permanent injunction & for reasonable attys' fee should not be granted & that defts. be served copies of order forthwith, filed. Copy to counsel.
Oct. 2	Per NE, notice to counsel that above hearing has been reset for Friday, October 11, 1968, at 3:00 P.M.
10	Affidavit of JIM CHERRY, filed.
	Memorandum in opposition to pltfs.' mot. for preliminary or permanent injunction, filed.
11	Came on for hearing, but hour being late, court stated would be set for later date.
22	Ct. reporter's stenotype notes filed.
28	Transcript of proceedings of 10-11-68, filed.
31	Per NE, set for further hearing on plts. motion for preliminary injunction on Thursday, November 14, 1968 at 2:00 P.M., counsel notified.
Nov. 8	Per NE, above hearing reset for Thursday, December 12, 1968 at 10:00 A.M., counsel notified.
Dec. 9	Per NE, above hearing reset for Friday, December 20, 1968 at 10:00 A.M., counsel notified.

DATE	PROCEEDINGS
1968	
18	Per NE, taken off for above hearing, to be reset at later date. Notice to counsel.
1969	
Feb. 18	Per NE, set for hearing on plts. motion for preliminary injunction on Tuesday, March 4, 1969, at 10:00 A.M., counsel notified.
25	Per NE, notice to counsel removing case from above hearing, to be set at a later date. (request made by counsel for continuance)
Mar. 7	Per NE, notice to counsel that case is set for hearing on plts. petition for preliminary injunction on Wednesday, April 9, 1969, at 2:00 P.M.
Apr. 9	HEARING on pltfs' pet. for preliminary injunction. Defts. advised they had just recently adopted a plan of desegration & ct. directed they get copy of plan to pltfs. by Mon., April 14, 1969, that pltrs. make response by Monday, April 21, 1969, & then SUBMIT to ct. at that time for study. Case set for further hearing on Mon., April 28, 1969, at 2:00 p.m.
10	Court reporter's steno notes of 4-10-69, filed.
21	Transcript of hearing on 4-9-69, filed.
22	SUBMITTED PER DOCKET ENTRY OF 4/9/69.
28	Defts' response to pltfs' objections, in form of letter, with two attachments (memoranda), filed. To NE.
29	Further hearing had as cont'd. from 4-9-69. Court took case under consideration.
May 20	Transcript of hearing on 4-30-69, filed. To NE.
21	Court reporter's steno notes, filed.

DATE	PROCEEDINGS
1969	
May 27	Order directing Horace Bohannan, Acting Reg. Dir. for Civil Rights, Dept. of Health, Education & Welfare, Atlanta, Ga., to appear in this court as a witness on Wed., May 28, 1969 at 9:30 a.m., filed. Copy delivered to U.S. Marshal. Copies to counsel.
28	HEARING HAD ON MOTION FOR INJUNCTION: Court took the case under consideration.
June 12	ORDER (allowing DeKalb School Authorities to select one of the two alternatives to be adopted) and JUDGMENT entered & filed. Court retains jurisdiction. Copy to counsel.
17	Marshal's return of service on Order of Court executed on 5-27-69 filed.
26	TRANSCRIPT of hearing 5-28-69, filed.
29	Steno notes of May 28, 1969, filed.
Oct. 13	Reports of defts. pursuant to order of 6-12-69 filed.
1970	
July 21	Report of defts. pursuant to order of court, filed.
Sept. 28	Report of defts. pursuant to order of court, filed.
1971	
July 14	Reports of defts. pursuant to order of 6-12-69, filed.
Aug. 20	Motion for Further relief by John D. Harper, filed. (C to Mr. Candler Per JSW)
26	Response to appeal (above motion) by defts., filed.
Sept. 7	SUBMITTED ON MOTION FOR FURTHER RELIEF BY JOHN D. HARPER.
Oct. 19	Deft's. response to section 5(c) of order dated 6-12-69, filed. To NE.

DATE	PROCEEDINGS
1971	
27	Order filed dismissing the Appeal of John D. Harper. Copy to counsel.
Nov. 24	John D. Harper's Notice of Appeal, filed. c. to counsel/cert. c. to U.S.C.A. w/c of docket sheet.)
Dec. 2	John D. Harper's AMENDED NOTICE OF APPEAL, filed. (Copy to counsel & U.S.C.A. w/copy of docket sheet)
13	RECORD ON APPEAL TO U.S.C.A. via Reg. mail. R.R. ACK. (Counsel advised)
1972	
Feb. 10	Cert. Copy of Order of U.S.C.A. granting appellees' motion to dismiss the appeal, filed. (copy to counsel, 2/10) File returned.
Mar. 16	Order of U.S.C.A. denying appellant's motion for reconsideration of U.S.C.A. order dismissing the appeal, filed. copy to counsel by Clk. of U.S.C.A.
June 29	Report of Pike County Public Schools, filed.
	Report of Dekalb County Board of Education, filed.
28	Pltf's motion to consolidate actions with C.A. 16708, to add parties deft. and for leave to file a supplemental and amended complaint, & proposed supplemental and amended complaint, filed. (Copy to each judge)
July 5	ORDER (SOS) that pltf's motion to consolidate actions, to add parties deft. & for leave to file a supplemental & amended complaint are hereby ALLOWED AND ORDERED FILED, subject to objection, FURTHER ORDERED that the Marshal of this Ct. serve all parties named as additional parties defts. & not previously before this Ct. in the original three principal actions sought to be consolidated herein, filed. (Copy to counsel and each judge) *Pltf's supplemental & amended complaint,* filed. (Cpy to)

DATE	PROCEEDINGS
1972	
11	Summons issued on add'l party defts. & del. to U.S. Marshal.
	Order ext. time thru 7/21/72 for responding to the Motion to consolidate, filed. (Copy to counsel &)
10	ANSWER of Atlanta School to Pltfs' amended complaint, filed.
24	Response to motion to consolidate, filed.
21	Response of the Board of Education of Cobb County to motion to consolidate actions, to add parties deft. and for leave to file a suppl. and amended complaint, filed.
31	Clayton County defts' response to supplemental and amended complaint, filed.
	Response of The Board of Education of Clayton County to motion to consolidate actions, to add parties deft. and for leave to file a suppl. and amended complaint, filed.
Aug. 22	Letter report of deft. with two maps & ltr. by pltf's counsel advising there are no objections to the attendance zone changes, filed.
	Order approving deft's requested changes in attendance areas for the DeKalb County School System and the changes may be invoked for the 1972-73 school year, filed. Copy to counsel.
Sept. 12	Pltfs' Memorandum of Law, filed.
Nov. 17	ORDER by 3 judge panel that all proceedings are stayed until further order of this court, except insofar as a single-judge Ct. may remove stay for discovery or other motions not relating to the request for a 3 judge panel or the motion to dismiss on the question of relief, filed. (c. counsel)

DATE	PROCEEDINGS
1972	
	ORDER that stay is lifted for following purposes & conditions of discovery: (1) Defts. are to furnish Pltfs. with following info for the school year of 1972-73 (2) such responses may be written form or data maps & records (3) Defts. granted until 1/1/73 to respond in writing or until 12/1/72 to set date for pltfs' counsel to inspect records during Dec. (4) except as provided in 2, the motions for protective order of defts. are granted, stay is con't as to all other discovery & motions until further order, filed. (c. counsel)
Dec. 15	Pltfs' motion to vacate stay, with brief & Exh. B, filed.
29	Response of The Cobb County School Board to Courts' Order of 11/17/72, with Exh. A & B, filed.
1973	
Jan. 3	ORDER by three judge panel filed DENYING the motion to vacate the stay previously entered on 11/17/72. Copy to counsel.
9	Response of the Dekalb County School Board to Court's order of 11-17-72, with exh. A&B filed.
June 28	Pltfs' motion to vacate stay, with brief & attachs. filed. (Attachs. in C.A. 16708 only)
July 16	Three-Judge Order filed—directing parties to file briefs within 15 days as to whether the question as amended still presents a three-judge question; after such determination, the court as then constituted will rule on the motion to vacate. (copy to counsel, 7/16)
18	Memo in support of defts' opposition to pltfs' motion to vacate stay & response of defts. Cook, et al in opposition to pltfs. motion to vacate stay, filed. Copy to each Judge.

DATE	PROCEEDINGS
1973	
31	Supplemental brief of Cobb County Board of Education, filed.
	Brief of pltfs. in opposition to a 3 Judge Court, filed.
Aug. 3	Plfts' second brief in opposition to motion for a 3 judge Court, filed. (c. judges)
24	Order directing that this case proceed simultaneously before a three judge panel of Bell, Smith & Moye and as a single judge court before Judge Smith; setting hearing for 9-26-73, at 10:00 A.M., & lifting stay until further order of this court, filed. (Copy to Counsel & SM & JFE 8-24)
29	Pltfs' motion to shorten time for answering interrogs., with interrogs & pltfs' motion to compel answer, filed.
30	ORDER directing that above interrogs. be ans. by 9/10/73, filed. (c. counsel)
Sept. 5	Letter dtd. 8/22/73 from the law firm Weekes, Candler & Sams, representing the Dekalb County Board of Education, advising of the changes in six zones re schools, filed.
10	Buford City Board of Education's Answers to Interrogs., filed. 16708
11	Alonzo A. Grim, Superintendent of Atlanta Public Schools' answer to pltf's interrogs., filed.
12	Answers of Dekalb County Board of Education To Pltf's Interrogs., filed. Copy to each judge.
14	Motion of Pltfs. Armour, et al requesting Hon. Griffin Bell To recuse himself from C.A. 16708, filed.
	Brief in support of above motion, filed.
	ANS. to pltfs. interrogs. by deft. Cobb County School Board, filed.

DATE	PROCEEDINGS
1973	
17	Answers of The Board of Education of The City of Decatur, Ga. to Pltfs' interrogs., filed.
	Answer of Alonzo A. Grim, Superintendent of Atlanta Public Schools to pltf's interrogs. #2, filed.
24	Pltfs' (Armour, et al) Proffer of Proof with attachs., filed.
26	Pltfs. proffer, filed.
	Response to proffer of proof by pltf. of Gwinnett County Board of Education, filed.
	HEARING Three Judge on court order dtd. 8/24/73. Court granted Atty. Margie Hame to tender proffer filed 9/24/73. Atty. Howard Moore filed proffer by pltfs. in Nos. 6298, 12880, 11946. Court served copies by courtroom Clk. Counsel Moore hand served all counsel in courtroom. Court granted counsel 20 days to file response to proffer offered by pltf. (10/17/73). Court granted counsel 20 days to file response to court's questions relating to City-County line sharing of Education (11/6/73).
Oct. 16	Transcript of proceedings had 9-26-73, filed. (In 16708)
Oct. 16	Response to the proffers of proof of the various pltfs' by defts' The Itaca, Dekalb County, Cobb County, City of Marietta, City of Buford and Clayton County with attachments, filed. (In 16708)
17	SUBMITTED PURSUANT TO ENTRY OF 9-26-73. (Did not send file)
23	Response of Atlanta Board of Education to Proffers of Pltf., filed. (Dup. to NE)
	Letter from law firm of Weekes, Candler & Sams stating that report attached to same was in response to an Order of the court, filed.

DATE	PROCEEDINGS
1973	
24	RESPONSE of deft. Fulton County Board of Education to proffers of plfts. Armour, et al, filed on 9/23/73 and 9/26/73 and to proffer of pltfs in nos. 6298, 12880 and 11946 filed on 9/26/73, filed.
Nov. 5	Answers of Gwinnett County Board of Education to questions propounded by the Court on 9/26/73, with attachments, filed.
	Answer to questions propounded by the Court by: (1) The State Defts; (2) The DeKalb County Defts; (3) The Clayton County Defts; (4) The City of Marietta Defts; (5) The City of Atlanta Defts, with appendix, filed. (In C.A. 16708)
6	Pltfs' responses to questions propounded by the Court, filed.
	Pltfs' proffer of proof (public housing), with Appendix A, filed.
	SUBMITTED PURSUANT TO ENTRY OF 9/26/73, "QUESTIONS PROPOUNDED BY THE COURT".
7	Answer of Deft. Fulton Co. Board of Education of ques. propounded by the Court with Exhibit A, B, C, C-1, and C-2, filed. TO SOS (in 16708)
	Answer of Deft. Cobb Co. Board of Education of ques. propounded by the Court with Exhibits A and B, filed. TO SOS (in 16708)
12	Answers of deft Buford City Board of Education of Questions Propounded by the Court, filed. (In 16708)
14	Pltf's responses to questions propounded by the court, filed. (in 16708)
	Supplement to proffer of proof filed 9-24-73, by pltfs', filed.
1974	
July 31	Pltfs' Motion To Vacate Stay & For Hearing with memorandum, filed.

DATE	PROCEEDINGS
1974	
Aug. 22	SUBMITTED ON PLTF'S MOTION TO VACATE STAY & FOR HEARING. (pretains to C.A. 16708 only)
Sept. 23	File returned from NE. Ruling forthcoming from GBB
Oct. 3	Pltfs Motion For Leave To Withdraw Supplemental and Amended Complaint, filed.
11	Pltfs' Motion To Amend Complaint, with *Proposed 2nd Amendment To Complaint*, filed.
23	ORDER (THREE JUDGE) GRANTING pltfs' motion to withdraw their previously filed motion to consolidate, aid parties deft, supplemental and amended complaint, w/o prejudice, filed. (Copy Counsel 10/23)
30	Copies of Order filed 10/23/74, mailed to Philip F. Interidge & Wm. Franklin Dykes High School PTA, returned.
1975	
July 31	Letter from the law firm of Weeks, Candler & Sams with attachments in response of Court Order of 6-12-69, filed.
Sept. 8	Pltfs' motion for preliminary or permanent injunction with brief and attachments, filed. NE
	Pltfs' motion for supplemental relief with brief, filed. to NE
9	HEARING: On petition of several of the class as to why their children cannot be transferred under the M to M system within the school district. Court verbally ruled that on the issue of M to M transfers, the issue is not moot, and on the question of faculty, the court took that matter under consideration.
Sept. 17	Steno notes of hearing had 9/9/75, filed.

DATE	PROCEEDINGS
1975	
19	Pltfs' Motion For Preliminary Or Permanent Injunction filed 9/8/75 returned from NE unsigned, rec'd.
25	SUBMITTED TO NE ON PLTFS' MOTION FOR PRELIMINARY OR PERMANENT INJUNCTION.
Oct. 30	Letter dtd 10/15/75, from Weekes, Candler & Sams, with attachments, filed. (To NE 11/3)
1976	
Jan. 12	Notice to withdraw as counsel of Howard Moore, Jr. for pltfs', rec'd. (Advised to comply with Local Rule 71.7)
Mar. 5	Motion To Waive Application Of Local Rule 71.7 & To Permit The Withdrawal Of Howard Moore, Jr., & Elizabeth Rindskopf, As Counsel Of Record For Pltfs', with brief, Exhibit A, Motion To Withdraw As Counsel, Affidavit, filed. (To NE 3/9)
15	ORDER filed GRANTING movants' request for waiver of the notice requirements of Rule 71.7 & GRANTING the request of Howard Moore, Jr. & Elizabeth Rindskopf to withdraw as counsel of record for pltfs. Copy to counsel.
16	Defts' brief in opposition to waiver of Local Rule 71.7, filed. To NE.
May 11	ORDER that defts' brief in opposition to waiver of Local Rule 71.7 be treated as a motion to reconsider, DENYING same, filed. c.c.
"	ORDER that pltfs. submit within 20 days a memorandum outlining the remaining issues, etc. & defts. have 10 days thereafter to submit a similar memo, upon the requested memo & the 1975-76 HEW report this case will be put in a position for resolution of pending issues, filed. c.c. & c. to Regional Director of HEW. ACK

DATE	PROCEEDINGS
1976	
June 3	Pltfs' memo of issues remaining for Court resolution, filed.
15	SUBMITTED PER ORDER OF 5-11-76.
25	Defts. memo of issues to be resolved, filed. to NE
July 2	Letter dtd 7/14/76, with report showing number of teachers to be employed in Dekalb School System for Fall of 1976, filed. NE 7/8
14	Defts' report showing the expected number of students per school for upcoming year, etc., filed. NE
	Report from Dept. HEW re investigation of effect of school zone changes in DeKalb County, filed. NE
16	ORDER by CAM APPROVING the request of atty. Donald P. Edwards for leave of absence during period of 7-19-76 thru 7-30-76, filed. c.c. NE
July 29	Notice to counsel setting for hearing on all pending matters on August 23, 1976 at 2:00 P.M.
Aug. 11	Deposition Subpoena To Produce Documents & Things To William S. Adams, with acknowledgment of service, filed. NE 8/12
	Deposition Subpoena To Produce Documents & Things To Joe Renfroe, filed. NE 8/12
16	Deft. DeKalb Co. Bd. of Education's motion to determine whether action may be maintained as a class action & to determine the status of the Movant-pltfs. Monica Rocker, et al with brief, filed. NE
	Deft. DeKalb Co. Bd. of Education's motion to quash & motion for protective order with brief, filed. NE
	Defts. memo in opposition to pltfs' motions for supplemental relief & for preliminary or permanent injunction, filed. NE
	Defts. objections to movant's request for production of documents, filed. NE

DATE	PROCEEDINGS
1976	
Aug. 18	ORDER by AJH for NE that pltf. shall proceed with the taking of depositions of William Adams & Joe Renfroe, DENYING the motion to quash the taking of depositions; GRANTING the motion to quash in reference to the production of documents except that pltf. shall have the opportunity to examine the documents at a place designated by defts. & may copy same at expense of pltfs., filed. c.c.
23	Depositions of JAMES J. RENFROE & WILLIAM S. ADAMS, filed.
25	HEARING on pltf's motion for injunctive relief. Court verbally denied defts. motion to dismiss. Counsel to prepare order & submit for signature. HEARING on question of Teacher ratio in the School system. Court stated he would enter an order in this matter.
26	HEARING cont: Court took up matter of M to M transfers. Exhibits admitted.
30	HEARING cont: Continuation of M to M transfers and on Teacher Placement & School District Lines. Exhibits admitted.
31	HEARING cont: cont. on question of Teacher Placement & school lines. Entire case taken under consideration. Pltfs. have 3 days to file affidavits. Parties have 10 days to submit briefs, 3 days to file any response desired. SUBMIT at end of this time. Court retained exhibits.
Sept. 2	SUBMITTED ON DEFT. DEKALB CO. BD. EDUCATION'S MOTION TO DETERMINE WHETHER ACTION MAY BE MAINTAINED AS A CLASS ACTION & TO DETERMINE THE STATUS OF THE MOVANT PLTFS. MONICA ROCKER, ET AL

DATE	PROCEEDINGS
13	Deft's supplemental brief concerning boundary line changes made in school attendance zones with attachments, filed. NE
15	SUBMITTED PER ENTRY OF 8-31-76.
17	Steno notes of proceedings had starting with 8/25/76, filed.
Oct. 8	Deft's objection to substitution of parties, filed. NE
14	Motion of Rebecca Henderson to Substitute Parties w/brief and proposed order, filed (To NE 10/18/76)
29	SUBMITTED ON MOTION OF REBECCA HENDERSON TO SUBSTITUTE PARTIES.
Nov. 3	Opinion allowing intervenors/to Intervene and Certifying Class Action Under Rule 23(b)(2) and ORDER as to M & M Program (See Order for details, filed. (Copy to Counsel 11/03/76)
"	ORDER Granting Motion of Rebecca Henderson to be substituted as a pty pltf representing herself and her minor children—Substituted Richard Henderson by Rebecca Henderson, filed. (Copy to Counsel 11/3)
4	Affidavits for use in lieu of incourt testimony, filed.
	Affidavit of Mrs. Richard Henderson, filed.
17	Pltfs' Motion to Alter or Amend Order w/brief, Affidavit of Claude C. George, Jr. and Proposed Order, filed.
24	Defts' Memorandum in opposition to Pltfs' Motion to Alter and Amend Order of 11/03/76, filed.
Dec. 2	SUBMITTED ON PLTF'S MOTION TO ALTER OR AMEND ORDER OF 11/03/76.
1977	
Jan. 10	Pltfs' selection of members to the Bi-Racial Committee, filed. (TO NE)

DATE	PROCEEDINGS
1977	
	Defts' Counsel (Gary M. Sams) letter to NE with breakdown of students in DeKalb Schools by race and by grade breakdown of teachers employed by school and race, filed.
31	ORDER GRANTING pltfs' motion to amend order of 11/03/76 to the extent enunciated in order, filed. (Copy to Counsel 2/01/77)
Feb. 7	Defts' nomination of members to the Bi-Racial Committee, filed.
12	Deft's memorandum in opposition to certain named individuals being
Feb. 25	Proposed stipulation ext. time thru 4/5/77 for pltfs to respond to defts Memorandum in Opposition to certain named individuals being appointed to the Bi-Racial Committee, rec'd. (To NE for his consiration 2/28/77)
Mar. 3	Pltfs/Memorandum in response to Defts' objections to Certain of pltfs' nominees to the Bi-Racial Committee, filed. To NE
4	Letter dtd 3/4/77, from Roger Mills re:bi-racial committee, filed. (To Ne 3/7/77)
30	ORDER that ct designates the following people to serve as members of the bi-racial committee which shall oversee the operation of the county's M-To-M program and shall review all proposed school zone changes or school site purchases (see order for names); further defts shall designate a member of its administrative staff to serve as an ex-officio member and liason between the school board and the committee; defts to notify individuals listed so that the committee may convene as soon as possible, filed. (Copy to counsel 3/30/77)

DATE	PROCEEDINGS
1977	
Apr. 12	Letter from potential members of biracial committee, rec'd.
	Defts' Motion to Alter or Amend Order of 3/29/77 w/Brief, filed.
15	Pltfs' Response to defts' motion to Alter or Amend order dated 3/29/77, filed.
	SUBMITTED ON DEFTS' MOTION TO ALTER OR AMEND ORDER OF 3/29/77.
18	ORDER DENYING defts' motion to alter or amend the 3/29/77 order—ORDERING defts to convene a meeting of the bi-racial committee by 4/26/77, filed. (Copy to Counsel 4/18/77)
May 6	Letter from Committee requesting ex for M-To-M applications, filed.
6	ORDER ext. M-to-M application through 5/31/77, filed.
July 1	Pltfs' proposed order for Bi-Racial Committee Guidelines, rec'd. (TO NE w/cpy of dkt sheet for his consideration 7/5/77)
Aug. 4	Pltf's motion for Award of Attorneys' Fees, Costs & Expenses with brief, filed. (To NE)
Aug. 12	Deft's proposed Procedural Guidelines, filed.
Aug. 19	SUBMITTED ON PLTF'S MOTION FOR AWARD OF ATTORNEY FEES
Aug. 18	Pltf's Supplemental motion for Award of Attorneys' Fees, Cost & Expenses, with brief, filed. (NE)
Oct. 3	Pltf's Memorandum to the Court, filed. To NE
Oct. 3	HEARING: Cause came on for hearing on motion of pltf. and the Bi-Racial committee to cause the School Board not to put into effect the present plans for movement of students in certain schools in the District. Court took the matter under consideration.

DATE	PROCEEDINGS
1977	
Oct. 4	ORDER that the defts. shall have until 10/10/77 to file their responses to pltf's motions for the award of atty's fees, cost & expenses, filed. (Copy to counsel)
Oct. 6	ORDER APPROVING the school board's proposed zone changes, filed. (Copy to counsel)
Oct. 14	RESUBMITTED ON PLTF'S MOTION FOR AWARD OF ATTORNEY FEES
Oct. 17	Deft's Memorandum in response to pltf's motion for Award of Atty. Fees, Costs & Expenses, filed. To NE
Oct. 26	Steno Notes of proceedings had 10/3/77
Oct. 26	Stipulation to ext. time thru 11/7/77 for plts. to respond to defts Memorandum in Response to pltfs' motion for Attorney's Fees, with ORDER ALLOWING, same, filed. (Copy to counsel) To NE
Oct. 26	Deft's ltr. in accordance with the 1969 Order, enclosing a report showing the number of students, broken down by class & race, of students in each school, filed. To NE
Nov. 8	Pltf's brief in reply to defts' Memorandum in opposition for an award of attys. Fees, Costs & Expense, filed. To NE
Nov. 30	Deft's interrogs. & Request for Production of Documents, filed. To NE
Dec. 1	Deft's racial makeup of teachers in DeKalb School System in accordance with order of 1969, filed. To NE
Dec. 12	Pltf's motion for Protective Order with brief & affidavit, filed. To NE
Dec. 16	Deft's motion to defer consideration with Memorandum, filed. To NE

DATE	PROCEEDINGS
1977	
Dec. 16	Pltf's addition response of to pltf's motion for Protective Order, filed. To NE
Dec. 27	ORDER AWARDING atty's fees and expenses to pltfs in the amount of $12,000.00.
	DENYING pltfs' motion for a protective order and defts motion to defer, as MOOT, filed. (Copy to counsel)
1978	
Jan. 6	Pltf's motion to Clarify & Alter Order of 12/27/78 with brief, filed.
12	Letter dated 1-10-78 re: death of atty. Candler, filed.
Jan. 18	Deft's brief & response to pltf's motion to clarify and Alter Order of 12/27/77, filed.
Jan. 23	SUBMITTED ON PLTF'S MOTION TO CLARIFY & ALTER ORDER OF 12/27/77
Feb. 9	Movant Pltf., Ann Trippe Johnson's motion to intervene as a pltf., with brief & motion for rule to show cause for contempt, with brief, filed. To NE
Feb. 21	Movant Pltf., Ann Trippe Johnson's Amendment to brief in support of motion to show cause why defts should not be held in contempt., filed. To NE
Feb. 22	Pltf's response to motion to intervene & motion for Rule to show cause for contempt, filed.
Feb. 23	SUBMITTED ON MOVANT-PLTF. ANN T. JOHNSON'S MOTION TO INTERVENE AS PLTF. & MOTION FOR RULE TO SHOW CAUSE FOR CONTEMPT
Mar. 2	Stipulation ext. time thru 3/10/78 for pltf's to respond to Movant Ann T. Johnson's motion to intervene as pltf. & motion for rule to show cause for contempt, with ORDER ALLOWING same, filed.

DATE	PROCEEDINGS
1978	
Mar. 13	Defts.' Response to Intervenor's Motion to show cause for contempt and Motion to Intervene, with affidavit, filed. TO NE
28	ORDER Awarding pltfs $13,465.00 in attorney's fees plus expenses of $491.46 and Court Costs, filed. (see order) cpy to counsel. NE
Apr. 14	Pltfs' motion for supplemental relief with brief in support of and exhibits, filed
Apr. 1[illegible]	Deft's motion to allow defts. to Change Attendance Zones with brief, filed. To NE
May 3	ORDER that issues (pltf's motion for supplemental relief & deft's motion to change Attendance zones) be more fully developed and a hearing on these matters will be held on 5/15/78 at 10:00 o'clock a.m., Room 318, U.S. Courthouse, filed. (Copy to counsel) To NE
May 10	ORDER GRANTING Ann T. Johnson's motion to Intervene as pltf.; Hearing will be held on 5/15/78 at 10:00 a.m., Room 318 (at which time pltf's Ann T. Johnson's motion for rule to show cause for contempt will also come before the court), filed. (Copy to counsel) To NE
May 15	HEARING: Cause came on for hearing. Hearing on question of closing Heritage School; Respondents EXHIBITS NO'S 1 thru 8 ADMITTED; Hearing on addition to Flat Shoals School. Hearing on petition to intervene by Ann Tripp Johnson, and Martin Chitwood counsel for Intervenor. After arguments, the Court directed the School Board to pay the intervenor expenses for transp. to & from school and to work out the matter for the future w/out having to file a petition of this kind in the Court. Hearing as to the Authority of the Bi-Racial Committee and of the School Board. The Court stated that he would

DATE	PROCEEDINGS
1978	
	pass an order in the very near future on all these questions heard this date, except the matters of the Intervenor and the authority of the Bi-Racial Committee, no ruling will be necessary in this regard. (NE retained file.)
May 19	Steno notes of 5-15-78, filed.
May 23	ORDER DENYING pltf's motion for Supplemental relief; GRANTING deft's motion to allow a change of attendance zones; DENYING Intervenor's motion to hold defts in contempt, but defts. are DIRECTED to compensate intervenor for the cost of transporting her child to Meadowview after 5/15/78, filed. (Copy to counsel)
May 30	Deft's motion to Alter & Amend Order of 11/3/76 with brief, filed.
May 31	Transcript of proceedings had 5/15/78, filed.
June 2	Pltf's motion to Amend Judgment with brief, filed.
June 8	Pltf's Supplement to brief in support of motion to Amend, filed.
12	Steno notes of May 15, 1978 hearing, filed.
12	Pltfs' response to defts' motion to alter or amend order of 11-3-76 with attachments, filed.
13	SUBMITTED ON DEFTS' MOTION TO ALTER & AMEND ORDER OF 11-3-76.
June 22	Stipulation for ext. of time thru 6/26/78 for defts to respond to pltf's motion to Amend Judgment with ORDER ALLOWING same, filed. To NE
June 26	Deft's brief in response to pltf's motion to Amend Judgment, filed. To NE

DATE	PROCEEDINGS
1978	
June 30	Deft's motion for ext. of time thru 7/11/78 to respond to pltf's response, to defts' motion to Alter or Amend Order of 11/3/76, with brief, with proposed order, filed. To NE.
July 7	Stipulation for ext. of time for defts to respond to pltf's response to defts' motion to Alter or Amend order of 11/3/78, thru 6/30/78 with ORDER ALLOWGING same, filed. (Copy to counsel) To NE
July 7	Deft's documents showing the number of teachers by school, grade & race, which DeKalb County Bd. of Ed. anticipates will be employed for the fall Semester, rec'd.
July 12	Deft's supplemental & responsive brief, relating to motion filed by defts 5/30/78, filed. To NE
July 14	SUBMITTED ON PLTF'S MOTION TO AMEND JUDGMENT.
Aug. 2	Pltf's response to defts' Supplemental brief, filed. To NE
Sept. 6	ORDER DENYING Pltfs' Motion to amend court's order of May 23, 1978 and GRANTING in part and DENYING in part Defts' Motion to alter of amend court's Order of 11-3-76: DIRECTING defendants w/in *10* days to advise all parents of special education students in writing of option of M-to-M program, filed. cc 9-7-78.
Sept. 18	Pltfs MOTION to Alter Judgment, w/Brief, filed.
Sept. 28	Pltf's counsel, Donald P. Edward's petition for Leave of absence from 10/4/78 thru 10/20/78 with proposed order, filed. (To NE for approval)
Oct. 3	Defts Brief in Opposition to Pltfs Motion to Alter Judgment, filed.

DATE	PROCEEDINGS
1978	
5	SUBMITTED ON PLTFS MOTION TO ALTER JUDGMENT.
2/	ORDER Granting Atty Donald P. Edwards request for leave of absence, filed. (c to c).
26	ORDER Denying pltfs' motion to alter or amend the court's order of Sept. 6, 1978, filed. (c to c)
Nov. 6	PLTFS' NOTICE OF APPEAL, filed. (fee & Bond requested) cpy to Counsel & cert. cpy of Notice & Docket to U.S.C.A.
7	Letter dated Nov. 2, 1978 from Atty Gary M. Sams, w/copy of elementary school map and high school map, filed. (placed loose in file)
15	Defts' Personnel report for the DeKalb County School System, per order of 1969, filed
13/	Stipulation waiving bond for costs on appeal, filed. to NE for approval. (no action necessary)
	Pltfs' Suggestion that Successors in Office be Substituted, w/Proposed order, filed.
	Pltfs' Designation of Portion of Record and Statement of Issues on Appeal, filed.
Nov. 30	ORDER that James H. Hinson, Jr. has been duly appointed as Superintendent and that John W. Truelove, John I. Ramsey, Frank B. Jernigan, Joe Willingham, George R. Fellows, David Williamson & John E. Fletcher, Jr. are presently duly elected members of the DeKalb County Board of Education be substituted as defts in place of named defts, their predecessors in said office, fld. cc
Dec. 8	RECORD ON APPEAL mailed to U.S.C.A., certified mail r.r.r. (Parties notified) ACK

DATE	PROCEEDINGS
1979	
Jan. 24	Defts' motn to alter & amend order, w/brief, fld.
31	Stipulation to supplement recond on appeal, filed.
Feb. 05	SUBMITTED ON DEFTS' MOTION TO ALTER & AMEND ORDER.
Feb. 08	Pltfs' response to Defs' motion with affidavit of Oscar Kirk, filed. NE
Mar. 7	SUPPLEMENTAL RECORD ON APPEAL, mailed to USCA ACK (ACK)
Mar. 08	Letter of Gary M. Sams re minutes of the meeting of the Bi-Racial Committee held on Feb. 5, 1979 with copy of minutes, filed.
Apr. 12	Defts' motion to alter or amend Order dated March 29, 1977 with brief, filed.
18	Pltfs' response to defts' motn to replace Bi-Racial committee member, fld.
05	HEARING: On defts motn to alter or amend order of court as to M to M Transfers. Evidence by the deft, witnesses sworn. Deft Movant exhibits #1 thru 16 ADMITTED (no #14). Evidence by the pltf witnesses sworn pltf exhibits 1 thru 9 ADMITTED. Court took the matter under consideration & allowed cnsl one week to file briefs if they desire.
May 9	ORDER DENYING part & GRANTING in part defts. motion to alter or amend, and the deadline for registration in the M-to-M program is ext. til 6-4-79 for this year only, filed. c.c.
	Letter from Charles L. Weatherly dated 4-12-79, filed.
	Letter from Roger Mills dated 4-10-79, filed.
21	Roger Mills notc of w/drawal as co-cnsl for pltfs, rec'd. (Atty notified that he did not comply w/local rule)

DATE	PROCEEDINGS
1979	
31	ORDER that defts' motn to alter or amend order of 3-29-77 is GRANTED & Mr. Mayweather is APPOINTED to the Bi-Racial Committee, fld. cc 6-1-79
Aug. 08	Certified copy from the USMC that the judgment of the District Court is affirmed. It is further ordered that the pltfs-appellants pay to the defts-appellees the costs on appeal to be taxed by the Clerk of this court, fld. cc
23	Transcript of proceding had on 4-5-79, fld.
Oct. 4	Steno notes of proceedings held 4-5-79, filed.
1980	
May 22	Letter dated 5-16-80 to NE from Gary M. Sams RE: Boundary line agreement.
July 11	REPORT of DeKalb County School System pursuant to order of June 1969. NE—Noted & retn'd
	REPORT of Glen Haven Elementary School & Rowland Elementary School pursuant to order of June 1969. NE—Noted & retn'd
Aug. 20	LETTER from Judge Edenfield to Mr. Sams dated Aug. 18, 1980 re: Redan Elementary or the New Mainstreet SCHOOL, w/attachments.
Oct. 28	REPORT of Gary M. Sams, pursuant to order of June 12, 1969. NE
	LETTER dated Oct. 27, 1980 from Judge Edenfield to Gary M. Sams re: Bi-Racial Committee REPORT of Gary M. Sams re: DeKalb County School System. NE
Nov. 13	ANNUAL REPORT of the Bi-Racial Committee.
1981	
Jan. 8	ORDER transferring case from Judge Edenfield to Judge O'Kelley. c.c. 1/20/71.

DATE	PROCEEDINGS
1981	
22	NOMINATIONS by Pltf to Biracial Committee & RESPONSE to defts nominations w/attach.
1982	
April 8	ORDER that the court wishes to hear from the parties on the petition to increase the size of the committee by two seats and to confer w/both sides about the status of the case & the future course of the committee. The Court will set a conference for 5/ / at 10:00 AM in chambers. The Court will defer consideration of the two extra seats the committee until after that conference. cc & eod 4/9/82.
Aug. 18	Ptlf picked up Exhibits. pp
Oct. 26	Deft picked up Exhibits. pp
1983	
May 5	MISC CONF: CT discussed with those present the issue dealing with the cap put on the total number of students to be accepted into Lakeside High School via transfer under the majority to minority rule. Also discussed the Briarcliff and Henderson Schools being alternate schools. Also discussed adding to replacements to fill the vacancies on the BiRacial Committee
Jul. 22	REPORT TO COURT as to Change of attendance Zones
Aug. 5	SUGGESTION for SUBSTITUTION of Parties w/ prop order by pltf
	MOTION by pltf for prel inj and MOTION for Supplemental Relief
Aug. 10	ORDER that Court will hold an evidentiary hearing on pltfs Motion for prel inj at the first available date cc 8-11

DATE	PROCEEDINGS
1983	
Aug. 25	NON-JURY TRIAL on pltfs motion for prel inj and for additional relief: ORDER substituting party defts Robert Freeman, Superintendent be substituted in place of James Hinson, Jr., that Lyman Howard, Norma Travis, and Phil McGregor be substituted as deft DeKalf County Board of Education members in place of John Truelove, Ray Jackson, and Claiborne Powell, fLD: cc 8-31
Aug. 26	NON-JURY TRIAL CONT: EXHIBITS ADMITTED
Aug. 29	NON-JURY TRIAL CONT: Defts BRIEF IN OPPOSITION to pltfs Mot for prel inj and Mot for supplemental relief, FLD;
Aug. 30	NON-JURY TRIAL CONT:
Aug. 31	NON-JURY TRIAL CONT: Pltfs MEMORANDUM of points and authorities on majority to minority transfer provisions, FLD: CT made oral findings into the record-written opinion will follow (exhibits retained by CT, also file)
Sept. 8	MEMORANDUM OPINION that Court is compelled to grant relief to the pltf; CT confirms its oral order of Aug. 31, 1983 Directing deft DeKalb County School System to accept students on the M to M waiting list for attendance at Lakeside up to Maximum enrollment of 1595 cc 9-8-83
Oct. 6	STENO NOTES of proceedings had Aug. 25, 1983 & Aug. 29, 1983.
Oct. 18	ORDER APPOINTING the following to Bi-Racial Committee: Juanita Boranco, Cheryl Espy, Archie Webber, and John C. Kapsaroff; Ct will appoint additional members at a later date and will establish terms for all members at that time. cc 10-19

DATE	PROCEEDINGS
1983	
Nov. 17	MOTION by Donald P. Edwards atty for pltfs, for leave of absence 12-9-83 thru 12-29-83 w/proposed order, attachment, (WOK for approval)
Dec. 27	SUBMITTED ON MOTION BY DONALD P. EDWARDS, ATTY FOR PLTFS, FOR LEAVE OF ABSENCE 12/9/83 thru 12/29/83
29	ORDER DENYING motion by Donald P. Edwards, atty for pltfs, for leave of absence 12/9/83 thru 12/29/83, c/c & EOD 12/30/83
1984	
Jan. 11	Cpy of order of 12/20/83 to Donald P. Edwards ret'd, "unable to forward"
23	MOTION by HOLD for leave to Intervene, Memorandum, proposed complt (WCO)
24	MOTION by FOR to Intervene as a pltf, brief, proposed complt (WCO)
30	MOTION bu HOLD, Movant-Intervenor, for expedited hearing, memorandum (WCO)
Jan. 31	HEARING: on pltfs' verbal motion for a continuance of trial; Ct DENIED pltf's motion for a continuance; GRANTED the request of atty for HOLD permission to participate in deposition of Roger Mills to the limited extent to determine HOLD's standing to intervene in the case, DENIED insofar as it may have related to the merits of the case.
Feb. 1	NON-JURY TRIAL: on the merits as to the issues relating to the Redan School District. (pltfs abandoned their request for relief as to the Knollwood Sch) Ct. GRANTED HOLD's motion for an expedited hearing; after hearing oral arguments on HOLD's & FOR's motions to interven, ct DENIED said motions at this time.

DATE	PROCEEDINGS
1984	
2	NON-JURY TRIAL CON'T: pltf's EXHIBITS ADMITTED
3	NON-JURY TRIAL CON'T: defts' EXHIBITS ADMITTED
6	NON-JURY TRIAL CON'T: ct adjourned until 2/10/84 for oral argument
9	TRIAL BRIEF on behalf of defts
10	NON-JURY TRIAL CON'T: Ct made verbal findings into the record denying relief requested by pltfs as to the Redan School District. Written opinion to follow. Exhibits retained by the Ct.
22	ORDER ACCEPTING the resignation of Roger Mills as a member of the Bi-Racial Committee, Ct will not fill the vacancy and will not make any appointments to the Bi-Racial Committee until the conclusion of the current school year, c/c & EOD 3/1/84
22	MEMORANDUM OPINION: directing the clerk to enter judgment in favor of defts and against pltfs; DENYING pltfs' motion for preliminary injunction on the Redan issue; prior to trial, counsel for pltfs abandoned the portion of the motion dealing w/ Knollwood Elementary School, therefore no ruling required, c/c & EOD 3/1/84 (pltf's exhibits, deft's exhibits & joint exhibits in exh. Room
29	JUDGMENT ENTERED that the Ct finds in favor of the pltfs as to issues related to Lakeside High School as setforth in this Ct's order filed 9/8/83 and that that Ct finds in favor of the defts as to the issues setforth in the Ct's order of 2/22/84, c/c & EOD 3/1/84

DATE	PROCEEDINGS
1984	
Mar. 23	NOTICES OF APPEAL (two) by pltfs from Order of 2/22/84 & Judgment of 2/29/84; Pltfs appeal from the judgment only as to those issues contained in the order of 2/22/84, including the denial of the disc requested (fees & bond not paid), ltr to Mr. Edwards requesting fees & bond, cert copy of dkt, Notice Order & Judgment to USCA 3/26/84 ACK USCA #84-8286
23	TRANSCRIPT of proceedings had 2/2/84
26	Cost bond on appeal by pltf
29	BILL OF COSTS w/brief & attachments by pltf in the amt of $2,275.82, cc & eod 4/3/84
Apr. 3	COSTS TAXED in the amt of $2,275.82 for pltf, cc & eod 4/3/84
9	MOTION by defts to review & disallow costs, brief
12	SUBMITTED ON BILL OF COSTS OF PLTF AND DEFTS' MOTION TO REVIEW AND DISALLOW COSTS
12	Ltr from Donald Edwards, atty for pltf, designating record to be sent on Appeal (notified atty that that consent of other party was needed) (WCO)
18	WITHDRAWAL OF BILL OF COSTS by pltf w/ proposed (to WCO for approval)
18	WITHDRAWAL OF A DUPLICATE NOTICE OF APPEAL by pltf w/attachment (to WCO for approval)
21	ORDER GRANTING pltfs' withdrawal of Bill of Costs, cc & eod 4/23/84
26	Ltr from Donald P. Ewards & Gary Sams, dated 4/24/84, Designating Supplemental record to include transcript of proceedings dated Feb. 1, 2, 3, 6, & 10, 1984, Order dated 10/5/77 and Order dated 5/8/79 to be sent on Appeal

DATE	PROCEEDINGS
1984	
May 2	REQUEST by pltfs for transcripts re hearing on 2/1/85; 2/2/84; 2/3/84; 2/6/84; 2/10/84
30	MOTION of pltfs. for an award of fees and costs w/brief & attchs.
June 12	BRIEF of deft. in opposition to pltf's mot. for costs & atty's fees.
20	SUBMITTED ON MOTION OF PLFTS FOR AWARD OF ATTY'S FEES & COSTS.
	RECORD MAILED TO USCA 11 VIA CERT. MAIL. (ACK) ACK
22	SUPPLEMENTAL MEMORANDUM by plas in support of their motion for attys' fees & costs (WCO)
July 3	ORDER APPOINTING the Bi-Racial Committee to be constituted as follows: Juanita Boranco, Cheryl Espy, Archie A. Webber, and John C. Kapsaroff to serve on the Committee until 7/1/85; and Jay B. Goldman, the Rev. Jimmie L. Smith, Dr. Wytch Stubbs, Judith A. O'Brien, and Bobbie K. Sanford to serve on the Committee until 7/1/86, cc & eod 7/6/84
July 11	ORDER DENYING pla's motion for atty's fees & costs incurred in the "Lakeside High School" phase of this action. copies served by jwe on 7/12/84
Aug. 10	NOTICE OF APPEAL by plas from Order of 7/11/84 which denied plas' motion for atty fees & costs (fees & bond pd) cert cpy of dkt, NOA, Order to USCA & eod 8/13/84 82-8662
13	CERT SUPPLEMENTAL RECORD ON APPEAL to USCA, consisting of 1 vol. by cert mail, rrr
21	EXHIBITS (D-13, D-19, D-18, D-20, D-1, D-3) picked up by counsel for deft & Hand Carried to the U.S.C.A., 11th Cir.

DATE	PROCEEDINGS
1984	
23	CONFERENCE: w/parties and the Bi-Racial Committee. Parties represented by Don Edwards, Gary Sams & Charles Weatherly. Also, Dr. Robert Freeman, Mr. Strain and Ms. Andrews were present. In addition thereto Ms. Juanita Baranco, Ms. Cheryl Espy, Mr. Archie A Webber, Mr. John C. Kapsaroff, Jay B. Goldman, Rev. J. L. Smith, Dr. Wytch Stubbs, Ms. Judith A. O'Brien & Bobbie K. Sanford, constituting the Bi-Racial Committee as it now exists, were present.
Oct. 1	MOTION by plfts for injunction pending appeal w/proposed order
2	ORDER DENYING pltfs' motion for injunction pending appeal, cc & eod 10/3/84
Nov. 8	STENO NOTES of proceeding had 8/23/84
1985	
Apr. 15	CERTIFIED COPY of judgment UScA AFFIRMING decision of USDC, and pltfs-appellants to apy costs, w/OPINION. (cc & eod 4-18-85)
23	CERTIFIED COPY of judgment from USCA (re appeal #84-8286) received, reversing & remanding case to district court, w/opinion, bill of costs.
	PROPOSED order making mandate of USCA the judgment of district court. (to WCO)
29	ORDER making mandate of USCA the judgment of district court. (cc & eod 4-30-85)
	CERTIFIED COPY OF JUDGMENT FROM USCA that judgment of District Court is REVERSED and case is REMANDED to District Court for further proceedings in accordance, with opinion of this court, w/OPINION, BILL OF COSTS, & ORDER that appellants' motion for award of atty's fees is remanded to district court for consideration at the conclusion of the litigation. (cc & eod 4-30-85)

DATE	PROCEEDINGS
1985	
July 3	CONFERENCE: Court directed counsel to file statements of their respective positions as to hwat the court is required to do, and to attach copies of their briefs to 11th Circuit, no later that 7-12-85; clerk to submit thereafter.
10	STENO NOTES of proceedings held before Judge O'Kelley 5-5-83, 8-31-83, 10-14-83 and 1-30-84.
19	SUBMITTED PER INSTRUCTIONS OF COURT AT CONFERENCE 7-3-85, RE STATEMENTS OF POSITIONS.
Aug. 13	ORDER setting hearing for 8/23/85 @ 10:00 a.m.; action shall be resubmitted after hearing. (copies mailed by ct dep 8/13/85; eod 8/16/85)
	Court retained orig. filed.
23	HEARING: plas to file briefs w/in 10 days; dfts to reply (days allowed for reply not shown on minute sheet); clerk to resubmit for ruling no later than 9/16/85.
	Court retained orig file.
Sept. 20	SUBMITTED PER INSTRUCTIONS OF COURT AT HEARING 8/23/85.
Oct. 9	ORDER reappointing as member of the Bi-Racial Committee Archie A. Webber; appointing new members Elizabeth Hudson, Ralph Davis, Jr., Barbara DeBardelaben and Johnny Jones, with their tierms of office to run until July 1, 1987. (CC & eod 10/11/85)
31	ORDER that court DENIES plas' request to enjoin implementation of defts' plan (cc & eod 10/31/85)
	JUDGMENT ENTERED in favor of dfts & against plas, dfts to recover costs. (cc & eod 10/31/85)

DATE	PROCEEDINGS
1985	
Nov. 21	EXHT. RETURN LETTERS mailed to counsel, rrr. ack ack
Dec. 2	BILL OF COSTS against plas in amount of $3751.30, by dfts. (counsel notified)
11	Dfts picked up exhts.
16	COSTS TAXED against pla in amount of $3751.30. (cc & eod 12/18/85)
1986	
Jan. 16	MOTION for final dismissal w/memo by dfts.
28	STIPULATION approved by clerk ext time thru 2/6/86 for plas to respond to dfts' motion for final dismissal. (cc & eod 1/29/86)
Feb. 4	Pla picked up all exhts.
7	RESPONSE of plas to motion for final dismissal.
20	SUBMITTED on DFTS MOTION FOR FINAL DISMISAL.
27	ORDER granting plas request for 3 months in which to conduct discovery; consideration of dfts motion for final dismissal is deferred until after disc. & the hearing which will be scheduled; motion to be resubmitted after hearing. (cc & eod 2/28/86)
May 27	STIPULATION of parties for order ext time period of disc, w/proposed roder. (to
30	ORDER ext disc thru 6/27/86. cc & eod 6/2/86
Jun. 05	MOTION of plas to submit addt'l interrogs to dfts w/memo & attachments.
Jul. 15	MOTION of pla to Compel dfts to Answer plas third set of interrogs

DATE	PROCEEDINGS
1986	
16	STATUS TELE CONF: Ct scheduled a pretrial conf for 9:30 Aug 8, 1986 & instructed counsel to be prepared to address any disc disputes & other matters
30	RESPONSE of dfts to Motion to compel dfts to answer plas 3rd interrogs
Aug. 11	SUBMITTED ON PLAS MOTION TO COMPEL
12	ORDER that disc will end Oct 31, 1986; parties to submit a consolidated proposed pretrial order by Nov 15, 1986; GRANTING plas mot to compel & plas motion to subm additional interrogs cc 3-14
Sept. 19	ORDER REAPPOINTING Jay B. Goldman & Ms Bobbi Sanford to membership of Bi-racial Committee for DeKalb County School System; CT APPOINTS new members, Saran G. Cooper, Ronald D. Phillips, Timothy J. Sweeney & Ralph W. Wright; terms shall run until July 1, 1988 cc 9-29
Oct. 24	ORDER ext disc thru Nov 15, 1986; PTO due Dec. 2, 1986 cc 10-24
24	ORDER that Mrs. Sarah G. Looper is relieved from serving on Bi-Racial committee due to a continuous conflict with that meeting date cc 10-24
31	NOTICE OF TAKING DEPOSITION of Robert Dentler
Nov. 5	IN CHAMBERS MISC CONF: Written order to follow
7	ORDER ext disc only for purpose of allowing parties to depose three experts: (1) Dr. Walberg (2) Dr. Dantler (3) Dr. Cole; any disc matters other than these must be concluded by Nov. 15, 1986; parties to submit prop PTO one week before trial if trial is held on currently scheduled date of Jan 20, 1987 (see order for details) cc 11-11

DATE	PROCEEDINGS
1986	
12	NOTICE to take DEPOSITION of DR. JOHN KICKLIGHTER by pla
17	REQUEST of pla for an ext of time to complete disc and for resetting of date for hearing on Motion for Dismissal
17	NOTICE of appearance by Kathleen L. Wilde for pla
17	Letter dated Nov 14 to WCO from plas re: termination of their lead atty
19	MOTION w/brief requesting permission to withdraw as attorney of Record for plaintiffs by Attorney Donald Edwards
21	HEARING on plas motions filed Nov 17, 1986; dfts MEMORANDUM in opposition to plas motions of Nov 17, 1986, FLD: written order to follow
26	MOTION by plas to require dfts to produce data requested in plas 4th interrogs & for reconsideration of motion to ext disc & reschedule hearing date
Dec. 5	REPLY of dft to plas motion to require dfts to produce data in merged form & for reconsideration of motion to extend disc & reschedule hearing date
10	REPLY BRIEF of pla in support of motions for merger & Reconsideration
11	ORDER GRANTING atty Donald Edwards motion to withdraw as atty for plas; GRANTING plas request that the hearing date on dfts motion for final dismissal be rescheduled for April; DENYING plas request for production of documents cc 12-15
1987	
Jan. 2	NOTICE to take DEPOSITION of ROBERT DENTLER by dfts

DATE	PROCEEDINGS
1987	
26	STENO NOTES of proceedings held on 2/1/84, 2/2/84, 2/3/84, 2/6/84, 2/10/84, 10/2/84 and 8/23/85.
Mar. 12	STIPULATION re: disc
27	IN CHAMBERS PRETRIAL CONF: CT will enter pretrial order
31	ORDER re pretrial conf; trial on pending motion will take apprx 13 days beginning July, 1987; attached are dfts proposed pretrial order & plas outline of the case. CT will consolidate these documents to form pretrial order; The Ct approves these documents as consolidated as the pretrial order of the Court. cc 4/7
Apr. 27	STENO NOTES of proceeding held on 10/23/86.
May 8	Case is set for trial on dfts Mot to Dismiss at 9:30 am July 6, 1987 (non-jury approx 2 weeks)
June 29	Letter dated June 26 from Kathleen L. Wilde to LDT re substitute portions of PTO, rec'd
30	Letter dated June 29 from Gary M. Sams to LDT re supplement to dfts PTO, rec'd
Jul. 1	MOTION of Amicus Curiae League of Women Voters of DeKalb County for leave to file brief
2	TRIAL BRIEF of pla in Opposition to dfts motion to dismiss
6	NON-JURY TRIAL dft EXHIBITS ADMITTED
July 8	NON JURY TRIAL CONT: Verbal MOTION by plas to exclude dfts exhibits 89-94, 105, 110-119 and 138 motion DENIED
9	NON JURY TRIAL CONT: plas EXHIBITS admitted

DATE	PROCEEDINGS
1987	
6	PROPOSED findings of fact by dfts'. (WCO)
	PROPOSED conclusions of law on motion to dismiss by dfts'. (WCO)
	PROPOSED findings of fact and conclusions of law by plas. (WCO)
7	non jury trial
13	NON-JURY TRIAL CONT:
14	NON-JURY TRIAL CONT:
15	NON-JURY TRIAL CONT:
16	NON-JURY TRIAL CONT:
20	NON-JURY TRIAL CONT:
21	NON-JURY TRIAL CONT:
22	NON-JURY TRIAL CONT: CT allowed dfts 20 days after receipt of transcript to file post trial brief; allowed plas 15 days receipt of dfts brief to file a reply Clerk to submit
31	STENO NOTES of proceedings held on 07/13/87 and 07/16/87.
Jul. 24	MOTION by pla for supplemental relief w/brief
Aug. 10	RESPONSE of dfts to plas motion for supplemental relief
24	SUBMITTED ON PLAS MOTION FOR SUPPLEMENTAL RELIEF
Sept. 4	ORDER DEFERING ruling on plas motion for supplemental relief until CT rules on dfts motion for final dismissal cc & eod 9/10
25	STENO NOTES of proceedings held on: 07/16/86, 08/08/86, 12/05/86, 11/21/86, 03/27/87, 07/01/87, 07/06/87, 07/07-08-09/87, 07/14/87, 07/15/87, 07/20-21-22/87.

DATE	PROCEEDINGS
1987	
Sept. 25	TRANSCRIPT of proceedings had July 9, 1987
Oct. 13	PROPOSED AMENDED FINDINGS OF FACT by dft
13	POST TRIAL BRIEF of dfts in support of their motion for a declaration of unitary status and for final dismissal
Oct. 28	MOTION by pla to require dfts to file Junior High plan
28	POST TRIAL BRIEF in opposition to dfts motion for declaration of unitary status and final dismissal
Nov. 9	REPLY of dft to plas post trial brief in opposition to motion for a declaration of unitary status and for final dismissal
9	BRIEF of dft in response to plas motion to require dfts to file Junior High Plan
16	SUBMITTED PER ENTRY of JULY 22 AND PLAS MOTION TO REQUIRE DFTS TO FILE JUNIOR HIGH PLAN
1988	
Jan. 22	TRANSCRIPTS of proceedings of July 6, 7, 8, 9, 13, 14, 15, 16, 20, 21 & 22, 1987
June 30	ORDER that DCSS shall have option of implementing a plan by 9/88 or 9/89 to achieve Singleton compliance w/regard to both teacher & principal assignments. DCSS shall file a report w/ct detailing the plan. DCSS shall attempt to equalize per pupil expenditures among types of schools during 88/89 school year. W/in 2 mos of end of that school year, DCSS shall file report w/ct showing per pupil expenditures. Dena Bi-Racial Committee is hereby abolished. Ct DENIES motion of defts to dismiss. Ct GRANTS IN PART pltf's motion for suppl relief & DENIES motion to require defts to file a Jr. High Plan. Local counsel picked up copies. cc

DATE	PROCEEDINGS
1988	
Jul. 13	MOTION by pla for Reconsideration w/brief in support
Aug. 1	RESPONSE of defts to pltf's motion for reconsideration.
3	SUBMITTED ON PLTF'S MOTION FOR RECONSIDERATION.
11	ORDER DENYING pltf's motion for reconsideration. cc
29	MOTION of pltf for award of costs & atty's fees w/brief.
Sept. 9	ORDER CERTIFYING order order of 6/30/88 for interlocutory appeal. FURTHER ORDERED that consideration of motion for attys' fees id deferred; the deadline for submission of supplements to the motion and response is suspended. cc
9	NOTICE OF APPEAL by pltfs from order of 6/30/88 & order of 8/11/88. Fees paid. cc Cert c/dkt, NOA, orders to USCA. 88-8687
Sept. 20	NOTICE OF APPEAL by defts from (portions of) order of 9/9/88. No fees paid. cc Cert c/dkt, NOA, order to USCA. Ltr re fees sent. ACK by USCA 88-8687
28	APPEAL FEES paid re NOA of 9/20/88 by defts. USCA notified 10/5/88 ack.
30	FORTHWITH LTR re 88-8687 from USCA.
Oct. 7	STENO NOTES of proceedings of 11/23/87 & 9/8/88.
21	JOINT MOTION to designate previous orders as part of Record on Appeal w/brief (to WCO for approval)

DATE	PROCEEDINGS
1988	
Oct. 24	Certified copy of order of USCA Granting petition for permission to appeal pursuant to 28 USC 1291(b) w/cover ltr to counsel advising 2 separate filing fees are required. They have docketed one case as the main appeal and other as the cross-appeal, but there is only one case number assigned to both. 88-8775 cc
26	APPEAL FEES paid by defts re 88-8775 USCA notified ACK
Nov. 1	ORDER GRANTING joint motion to designate previous order as part of the record on appeal. (Orders of 6/12/69, 11/3/76 & 10/31/85 should be made part of record on case and transmitted to USCA) cc copy of this order & joint motion & brief of 10/24/88 to USCA (brief details which orders are designated)
7	Letter, dated 11/4/88 from J. Stanley Hawkins of Weekes & Candler stating defts-appellees request that all of the exhs accepted into evidence by ct at hearing held from 7/6 thru 7/22/87 be included in record transmitted to Ct of Appeals.
7	Fees paid by pltfs re 88-8775 USCA rec'd money and forwarded it to us.
10	FORTHWITH ltr from USCA re 88-8775 & 88-8687
17	NOTICE OF APPEARANCE of atty Marcia W. Borowski for pltfs.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action No. 11946

WILLIE EUGENE PITTS, a Minor, by his Mother and Next Friend, MRS. ANNA MAE PITTS; VICTOR MARTIN, a Minor, by his Father and Next Friend, ROBERT L. MARTIN; KELVIN, FELICIA, ALFRED, ORMA, and ALFREDIA HENDERSON, Minors, by their Father and Next Friend, RICHARD HENDERSON; PATRICIA JOYCE REEVES, a Minor, by her Mother and Next Friend, MRS. ROSA LEE REEVES; ANTHONY REED and CECILIA SEARCY, Minors, by their Mother and Next Friend, MRS. JUANITA SEARCY; NED and BECKY STONE, Minors, by their Father and Next Friend, ALFRED E. STONE, JR.; JOY, BRIDGET, and SANDRA BECKER, Minors, by their Father and Next Friend, LOUIS E. BECKER; and all others similarly situated,

Plantiffs,

-vs-

JIM CHERRY, Superintendent of Schools, DeKalb County, Georgia; DR. JAMES H. HINSON, JR., President, DeKalb Junior College; and DEKALB COUNTY BOARD OF EDUCATION,

Defendants.

COMPLAINT

[Filed Jul. 5, 1968]

1. The jurisdiction of this Court is invoked pursuant to the provisions of Title 28, United States Code, Section 1343(3), this being a suit in equity authorized by law, Title 42, United States Code, Section 1983, to be brought to redress the deprivation under color of state statute,

ordinance, regulation, custom or usage of rights, privileges and immunities secured by the Constitution and laws of the United States or by any act of Congress providing for the equal rights of citizens. The rights here sought to be protected are rights secured by the Thirteenth Amendment and by the equal protection clauses of the Fourteenth Amendment of the Constitution of the United States, Title 42, United States Code, Sections 1981 and 2000(d), and Sections 80.4 and 181, et seq., 45 Code of Federal Regulations, as revised.

2. This is a proceeding for a preliminary and permanent injunction enjoining defendants from operating the public school system of DeKalb County, Georgia on a racially segregated basis.

3. This is a class action brought by the adult plaintiffs for the minor plaintiffs on behalf of themselves and on behalf of other adults and minors similarly situated, pursuant to the provisions of Rule 23(b)(2) of the Federal Rules of Civil Procedure. There are two classes of plaintiffs. Members of the first class are all adult Negro citizens and their minor children, of the State of Georgia, who reside in DeKalb County, Georgia. Members of the second class are all adult white citizens and their minor children, residing in DeKalb County, Georgia, who favor integration of their schools. The minors are all eligible to attend the public schools of DeKalb County, Georgia. The members of both classes are all similarly affected by the action of the defendants in maintaining and operating the public school system of DeKalb County, Georgia on a racially segregated basis. The named plaintiffs adequately represent the interests of each of their classes.

4. The adult plaintiffs in this case are all citizens of the United States and of the State of Georgia, residing in DeKalb County, Georgia. Each adult plaintiff is the parent of one or more minor children who are eligible to attend the public schools, under the control of the defendants. Each minor plaintiff is likewise a citizen of the

United States and of the State of Georgia, residing in DeKalb County, Georgia.

5. All of the named plaintiffs are members of the Negro race with the exception of the adult plaintiffs ALFRED E. STONE, JR., and LOUIS E. BECKER, and the children named of each. The race of these latter adult and minor plaintiffs is white.

6. The minor plaintiffs attend the following grades and schools within the system administered by the defendants: WILLIE EUGENE PITTS, eighth grade, Cross Keys High School; VICTOR MARTIN, tenth grade, Cross Keys High School; KELVIN, FELICIA and ALFRED HENDERSON, Rock Chapel elementary school; ORMA and ALFREDIA HENDERSON, Lithonia High School; PATRICIA JOYCE REEVES, fifth grade, Lynwood Park elementary school; ANTHONY REED, ninth grade, Cross Keys High School; CECELIA SEARCY, fifth grade, Jim Cherry Elementary School; NED STONE, eight grade, Druid Hills High School; BECKY STONE, Fernbank Elementary School; JOY and SANDRA BECKER, eleventh grade, Druid Hills High School; and BRIDGET BECKER, seventh grade, Fernbank Elementary School.

7. JIM CHERRY, DR. JAMES H. HINSON, JR., and the DEKALB COUNTY BOARD OF EDUCATION, DeKalb County, Georgia, are the defendants named herein. Defendant JIM CHERRY is the Superintendent of the public schools of DeKalb County, Georgia, and is the Chief Administrative Officer thereof. He holds office pursuant to the laws of the State of Georgia, subject to the authority and control of the DeKalb County Board of Education. He is sued in both his official and individual capacities. DR. JAMES H. HINSON, JR., is the President of DeKalb Junior College, a public school under the authority and control of the DeKalb County Board of Education. He is the chief administrative officer thereof, and is sued in both his official and individual capacities.

8. The DeKalb County Board of Education exists pursuant to the Constitution of the State of Georgia, and the laws of the State of Georgia, as a governmental agency of the State of Georgia, charged with the governmental function of establishing, maintaining and operating the public schools system of DeKalb County, Georgia. The public schools of DeKalb County, Georgia are under the direct supervision and control of the defendants named herein.

9. Defendant DEKALB COUNTY BOARD OF EDUCATION operates 77 elementary schools, 20 high schools, and approximately 5 special schools in DeKalb County, Georgia. There are approximately 74,930 students in the system, with 3,754, or 5.6 per cent, being members of the Negro race. There are approximately 3,459 full time faculty members employed by the system with 198, or 5.8 percent, being members of the Negro race.

(a) Five of the elementary schools in the system are attended solely by pupils of the Negro race. Forty-seven of the elementary schools of the system are attended solely by pupils of the white race. Sixteen elementary schools in the system are attended by white pupils in excess of ninety percent. The remaining elementary schools in the system are at least seventy-five per cent white.

(b) Two of the high schools in the system are attended solely by pupils of the Negro race. Five of the high schools in the system are attended solely by pupils of the white race. Ten high schools in the system are at least ninety-five per cent white. The remaining high schools in the system are at least ninety per cent white.

(c) The faculty at thirty-seven of the elementary schools in the system is all white. The faculty at thirty-five of the elementary schools consists of one Negro and the remainder whites. The faculty at the remaining five schools, which are the schools with all Negro attendance, consists variously of all Negroes, all but one Negro, and all but two Negroes.

(d) The faculty at seven of the high schools is all white. The faculty at three high schools is all white with the exception of one Negro each. The faculty at six high schools is all white with the exception of two Negroes each. The faculty at one high school is all white with the exception of one Negro. The faculties at the remaining two high schools, which have all Negro attendance, is all Negro and all Negro with the exception of three whites, respectively.

(e) The principals and administrative officers of each school except the five all-Negro elementary schools and the two all-Negro high schools are all white.

10. In the years since the decision in *Brown v. Board of Education of Topeka*, defendants, while acting under color of the laws of the State of Georgia, have failed to effectuate an orderly transition to a unitary non-racial school system and continue to maintain and operate the public school system of DeKalb County, Georgia on a racially segregated basis. Defendants presently hold themselves out as operating the public school system of DeKalb County, Georgia, on the basis of a two-part attendance plan. Zones are drawn for attendance at each elementary and high school, but pupils residing in any zone may exercise a "freedom of choice" and transfer to any other school within the system. The attendance zones in DeKalb are drawn, or "gerrymandered," in such a way as to ensure all Negro attendance at five elementary schools and two high schools. White persons living within the "Negro" attendance zones have exercised their "freedom of choice" to avoid integration, and, as a result of both the zones and the freedom with which minority whites may transfer to schools in which whites are in the majority, the affirmative duty or burden of meaningfully commencing and promptly completing the transition from a dual school system is illegally shifted to Negro parents and their children, or to white parents and their children who favor integration. The reliance of the defendants

upon their "gerrymandered" zones and on their so-called "freedom-of-choice" plan has resulted in the maintenance of schools which are clearly identifiable as white or Negro. Indeed, in past years, the defendants have actually furnished bus transportation to those pupils who were transferring out of their attendance zones for the purpose of avoiding integration.

11. Defendants are presently engaging or planning to engage in the refurbishing and expansion of at least two schools which are clearly identifiable as all-Negro schools.

12. Attendance at DeKalb Junior College, operated by defendants presently includes 3,372 whites, 70 Negroes, and 20 others. The faculty at said college consists of 117 whites, no Negroes, and one person of another race.

13. Negro pupils who attend integrated schools in the DeKalb County system are subject to academic, disciplinary, and physical harassment by the white faculty and students of said schools. As a result of such treatment, Negro pupils attending said integrated schools are frequently suspended and cannot, accordingly, fully benefit from their integrated schooling.

14. The DeKalb County schools, on information and belief, receive at least $2.3 million in funds from the federal government, which is approximately eight per cent of the budget of said schools. Defendants have not yet submitted an acceptable "plan of compliance" with the United States Department of Health, Education & Welfare, as required by Title VI of the Civil Rights Act of 1964, and are in consequent danger of having said federal monies terminated. Said termination would work a hardship upon all the pupils of said County, and especially upon the Negroes represented herein, who are less well economically endowed than the white citizens of said county. The white citizens are thus in a better position to provide supplementary educational materials and/or tutoring for their children if the federal funds are cut off.

15. The operation of the public school system of DeKalb County, Georgia, on a racially segregated basis, as hereinabove set forth, deprives the minor plaintiffs and other Negro or white students similarly situated of equal educational opportunities in violation of rights secured to them by the equal protection clauses of the Fourteenth Amendment of the Constitution of the United States and by Title 42, United States Code, Sections 1981 and 2000 (d). The denial of equal educational opportunities to the minor Negro plaintiffs and others similarly situated impresses a badge of slavery and servitude upon them in violation of the Thirteenth Amendment of the Constitution of the United States. The operation of the public school system of DeKalb County, Georgia, on a racially segregated basis consequently results in irreparable injury to the minor plantiffs and other students similarly situated. There is no complete, adequate or speedy remedy at law to compensate the minor plaintiffs for the injury which they are presently sustaining as a result of the operation of the public school system of DeKalb County, Georgia, on a racially segregated basis.

WHEREFORE, Plaintiffs pray:

1. That process may issue and be directed to each of the said defendants, herein named, requiring them to appear and answer this complaint;

2. That upon filing of this complaint, this Court will advance this case on the docket and order a speedy hearing thereof according to law;

3. That this Court will issue a preliminary injunction pending final disposition of this case and a permanent injunction upon the final determination of this cause enjoining the defendants from operating the public school system of DeKalb County, Georgia on a racially segregated basis;

4. That the Court will order the defendants to immediately promulgate in every respect and detail the

procedures the defendants will follow to promptly effectuate the transition to a unitary non-racial school system and that, upon the basis of said plan, the defendants be ordered to seek continuation of direct financial assisance from the Office of Education of the United States Department of Health, Education and Welfare; and

5. That this Court allow plaintiffs their costs herein, including a reasonable attorney's fee, and grant such further or additional relief as to the Court may appear just and proper in the premises.

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New York, New York

Attorneys for Plaintiffs

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

(Caption Omitted in Printing)

ANSWER

Now come the Defendants, JIM CHERRY, Superintendent of Schools of DeKalb County, Georgia, DR. JAMES H. HINSON, JR., President of DeKalb Junior College and DEKALB COUNTY BOARD OF EDUCATION, and file this their Answer and respectfully show to the Court:

1. Defendants admit the allegations in Paragraph one (1) but deny the allegation that there is any deprivation of rights, privileges or immunities as alleged; and deny further that the Thirteenth Amendment to the Constitution of the United States has any applicability to the Plaintiffs' Complaint as alleged.

2. Defendants admit the allegations in Paragraph two (2).

3. Defendants admit the allegations of Paragraph three (3), except that they deny that the members of the second class (white citizens and their minor children) constitute a class as contemplated under Rule #23 of the Federal Rules of Civil Procedure, and except further that they deny that they are operating and maintaining the public school system of DeKalb County, Georgia on a racially segregated basis.

4. Defendants admit the allegations of Paragraph four (4).

5. Defendants admit the allegations of Paragraph five (5).

6. In answering Paragraph six (6), these Defendants say that there have been certain changes in the schools attended by the named children and for clarity set forth below the correct school attended by each of said children.

(a) *Willie Eugene Pitts.* It is admitted that this child will attend the Cross Keys High School in the school year 1968-69, but say that said child attended Lynwood Park Elementary School in the year 1967-68.

(b) *Victor Martin.* This allegation is admitted.

(c) *Kelvin, Felicia and Alfred Henderson.* It is admitted that these children will attend the Rock Chapel Elementary School in the school year 1968-69, but say that all of said children attended Bruce Elementary School in the year 1967-68.

(d) *Orma and Alfredia Henderson.* It is admitted that said children will attend Lithonia High School in the year 1968-69, but say that said children attended Bruce High School and Bruce Elementary School in the year 1967-68.

(e) *Patricia Joyce Reeves.* This allegation is admitted.

(f) *Anthony Reed.* This allegation is admitted.

(g) *Cecilia Searcy.* This allegation is admitted.

(h) *Ned Stone.* No such student is listed as alleged. However, the school records show that there is an Alfred Edward Stone, III, who attended Fernbank Elementary School in the year 1967-68 and will attend Druid Hills High School in the year 1968-69.

(i) *Becky Stone.* This allegation is admitted.

(j) *Joy and Sandra Becker.* This allegation is admitted.

(k) *Bridget Becker.* This allegation is admitted.

7. Defendants admit the allegations in Paragraph Seven (7) as alleged, except Defendants deny that the

DeKalb County Board of Education is a party which can be sued and, under Rule #9(a) of the Federal Rules of Civil Procedure, Defendants specifically deny that said Board is a proper party to this Complaint. Under Rule 17(b) of the Federal Rules of Civil Procedure, the capacity of said Board to sue must be "determined by the law" of Georgia. The Supreme Court of Georgia has, in many instances, held that the several boards of education in the State, as such, can neither sue nor be sued. A few of the many decisions articulated by the Supreme Court of Georgia are as follows:

> *Board of Education of Chandler County, et al., Vs. Southern Michigan National Bank, etc., 184 Ga.641 (642).*
>
> *Smith, et al. Vs. Maynard, et al., 214 Ga. 764 (769).*
>
> *Morman Vs. Board of Education of Richmond County, 218 Ga. 48 (49).*

8. Defendants admit the allegations of Paragraph (8).

9. Answering Paragraph nine (9), these Defendants admit that there are 77 elementary schools operated by the DeKalb County Board of Education and 20 high schools, but deny that approximately five (5) special schools are operated and say that said Board operates nine (9) special schools for home instruction, trainable mentally retarded children and emotionally disturbed children, and that in addition, said Board of Education operates special education classes in 24 of the schools exclusively for the educable mentally retarded children, children with impaired hearing, emotionally disturbed children, children with visual impairments and children with specific learning disabilities. Defendants say that at the end of the ninth month of the 1967-68 year, there were 74,741 on the active roll in grades one through twelve, and admit the allegation that there were 3754 or 5.6% of said students of the Negro race. Defendants

say that for the 1967-68 year approximately 36% of this 5.6% were enrolled in schools with predominately white students. Defendants admit that there were 3459 full time faculty members employed by the System, but say that there were 204 Negro faculty members employed by the System in the school year 1967-68, which represents 5.89% of the total faculty who were members of the Negro race.

Defendants say further in this connection that during the school year 1967-68, approximately 36% of this 5.6% of Negro students were enrolled in schools with predominately white students and that under the plans and procedures which have already been intiated throughout the System by the beginning of the school year 1969-70, between 50% and 60% of this 5.6% total Negro enrollment is expected to be in schools with predominately white students.

Further in this respect, these Defendants say that at the close of the 1967-68 school year, there were approximately 150 faculty members teaching across racial lines both whites and Negroes transferred to or from schools that were either predominately white or predominating Negro; that this matter has been specifically discussed in conferences with the Department of Health, Education, and Welfare, and that said Department has indicated that by the beginning of the school year 1969-70, there should be approximately 200 such faculty members teaching across racial lines. Plans and work have already been put into effect in said School System to effectuate this and by the beginning of the school year 1969-70, faculty members teaching across racial lines will exceed 200.

(a) Defendants admit the allegations of this Paragraph.

(b) Defendants admit that during the school year 1967-68 there were two high schools attended solely by

pupils of the Negro race, these schools being the Bruce Street High School and the Hamilton High School. But Defendants say that although this allegation was true with respect to the 1967-68 school year, the Bruce Street High School has now been closed and only one high school in the System (Hamilton High School) will be attended solely by pupils of the Negro race.

The students formerly attending the closed Bruce Street High School have been distributed as follows: Approximately 269 will go to the Lithonia High School and approximately 20 will attend the Stone Mountain High School. Both the Lithonia High School and the Stone Mountain High School are attended by predominantly white students. No faculty member formely teaching at the closed Bruce Street School will be terminated but all will be retained as teachers in the System. With respect to the Hamilton High School, the one remaining high school attended by Negro students, an official of the Administrative Staff of the System has been assigned to constantly work in the geographical area for the purpose of securing attendance in this school by as many white pupils as is possible. Defendants say further that during the school year 1967-68, the faculty of the said Hamilton High School was desegregated, and plans have already been instituted whereby at the beginning of the 1969-70 school year, the faculty will have a ratio of approximately 60% to 40%. Defendants admit the remaining allegations of said Paragraph.

(c) Defendants admit the allegations of this Paragraph except that they deny the allegation that the faculties at five (5) schools, which are the schools with all Negro attendance, consist variously of all Negro, all but one Negro, and all but two Negroes and say that all schools with predominately Negro attendance have faculties as follows:

(1) *Bruce Street Elementary School.* 22 Negro faculty members and no white faculty members for a total of 22.

With respect to this school, these Defendants say further that although these allegations are true with respect to the 1967-68 school year, they are not true with respect to the 1968-69 school year. The DeKalb County Board of Education has committed itself to furtherl faculty desegregation and says that steps have already been initiated to fully meet the requirements in this respect during the year 1968-69.

(2) *County Line School.* 9 Negro faculty members and three (3) white faculty members for a total of twelve (12).

(3) *Robert Shaw School.* 28 Negro faculty members and five (5) white faculty members for a total of 33.

(4) *Lynwood Park School.* 18 Negro faculty members and one (1) white faculty member for a total of 19.

(5) *Victoria Simmons School.* 3 Negro faculty members and two (2) white faculty members for a total of eleven (11).

(d) In answering Paragraph 9 (d), these Defendants deny that there are seven (7) high schools of all white students and say that during the 1967-68 school year, there were only five (5) high schools out of a total of twenty (20) in the System which had all white students. The remaining allegations of said paragraph are admitted.

(e) The allegations of said Paragraph are admitted as alleged but in answer further to said paragraph, Defendants say that there are six (6) regular full-time Negro Administrative Staff employees working in the Administrative Offices of the System. This number will be increased during the school year 1968-69. As a matter of fact, negotiations are now under way for one additional such employee. Defendants say further that there are eight (8) regular full-time Negro administrative employees working in the DeKalb Junior College under the

Work Study and Students' Assistance Program. In addition to these, Defendants say that there are 212 part-time Negro Administrative Staff employees working under the Neighborhood Youth Corps. These Administrative Staff employees are assigned to various units of administration depending upon their skills. Typical of such units are secretaries, clerks, typists, Fernbank Science Center, elementary and high schools, nurses aides and nursery aides, etc. The above specified number of Negro employees does not represent the total number of Negro employees under the Neighborhood Youth Corps but only those who are assigned to predominately white schools or units.

10. The allegations of Paragraph Ten (10) are denied. Touching the allegations of said Paragraph, these Defendants will set forth hereinbelow the actual facts pertaining to these matters.

11. The allegations of Paragraph Eleven (11) are denied.

12. In answering Paragraph Twelve (12), these Defendants say that at the end of the 1967-68 school year 2917 students were enrolled in the DeKalb Junior College. The allegation that there are 70 Negro students enrolled in said College, for lack of sufficient information is neither admitted nor denied, since the records of said College do not provide information as to race. In further answering said paragraph, these Defendants say that said College operates on an open-door policy and any student who applies for admission to the College is accepted upon presentation of a high school diploma and compliance of the admission procedure. While no definite number of Negro students can be given, it is anticipated that the Negro student enrollment for the year 1968-69 will be approximately 125.

These Defendants admit that the faculty at said College consists of 117 white, no Negroes and one person of

another race, but say further in this connection that while this allegation was true during the year 1967-68, since the close of said year, one Negro member of said Junior College faculty has already been employed and efforts are being made specifically to employ more as they become available. The requirement for all faculty members of said College, regardless of race, is that they hold at least a Master's Degree in the field of their chosen subject of instruction, and these Defendants have found it difficult to secure qualified Negro faculty members but are doing so with the utmost dispatch possible.

13. The allegations of Paragraph Thirteen (13) are denied.

14. The allegations of Paragraph Fourteen (14) are denied. Defendants admit that they receive large sums from the Federal Government but say further, that said funds are on no danger whatsoever of being terminated; that since the passage of the Civil Rights Act of 1964, the DeKalb County School System has been in compliance therewith and the plans of compliance have been approved each year by the Department of Health, Education, and Welfare. As a matter of fact, the DeKalb County School System was the first System in the State of Georgia to have its plan of compliance approved. The System has never been determined as in "non-compliance" and Representatives of the School System's Administrative Office have been in continuous contact with the Department of Health, Education, and Welfare in developing acceptable plans of compliance for each school year through 1968-69. The DeKalb County Board of Education has agreed without reservations that the DeKalb County School System will become a unitary school system by September, 1969.

15. The allegations of Paragraph Fifteen (15) are denied.

16. In further answering the allegations of said Complaint, these Defendants say that the DeKalb County

School System is not operated on a "two part attendance plan" as is alleged but say, to the contrary, that the pupil assignments in the DeKalb County School System are made according to established geographic attendance areas, with students attending school in their respective attendance area but with the right to transfer to another school if such request is made at the time of registration only, and if the school which they request to attend is not over-crowded. As stated above, these plans have been approved by the Department of Health, Education, and Welfare.

The transfers referred to above are available to all students and have been exercised by both races.

It is alleged that the attendance zones have been "gerrymandered" in such a way "as to insure all Negro attendance in five (5) elementary schools and two (2) high schools." This allegation is specifically denied and, to the contrary, the lines comprising attendance areas, which have been approved by the Department of Health, Education, and Welfare, are drawn following natural barriers, when possible, such as railroad tracks, creeks, highways, etc., keeping in mind the number of pupils to be assigned and the size of the school designated to serve the area.

The DeKalb County School System does not operate on the "freedom of choice" plan but rather under a plan of geographical attendance areas with the right to transfer under the said school system's plans of compliance. Each child, regardless of race, color, creed or national origin is entitled to go to the school in the attendance area in which he resides and must do so unless the transfer privileges are exercised.

Under the plans of compliance, each of which has been approved by the Department of Health, Education, and Welfare, from year to year in a small number of cases both white and Negro students were furnished bus trans-

portation to attend schools outside of their attendance area after they had requested transfers. Beginning with the school year 1968-69, this practice has been eliminated entirely except for pupils attending programs for exceptional children in special schools. This elimination of busses is typical of the progressive plans of compliance upon which the school system and the Department of Health, Education, and Welfare have agreed since 1964.

17. In further answer to said Complaint, these Defendants say that they have diligently and in good faith undertaken, in all matters involving every phase of integration of the DeKalb County School System, to work in complete cooperation with the Department of Health, Education, and Welfare. The System, through its Board of Education and Superintendent of Schools, has expressly committed itself to accomplish a complete unitary school system by the beginning of the school year 1969-70. In numerous conferences with the Department of Health, Education, and Welfare since 1964, there has been a progressive transition to a unitary school system made in the light of the results of these conferences and the suggestions and advice of the Department of Health, Education, and Welfare, taking into consideration the decisions and rulings of the Federal Courts. These Defendants respectfully submit that these agreed upon plans of compliance fully meet the decision of the United States Supreme Court in the case of *Monroe, et al. Vs. Board of Commissioners of the City of Jackson, Tennessee, et al., 20 Law. Ed. (2d), page 733, 88 Supreme Court, Page —; 36 Law Week, Page 4480*, in which the Court held:

> "We do not hold that 'free transfer' can have no place in a desegregated plan. But like 'freedom of choice,' if it cannot be shown that such a plan will further rather than delay conversion to a unitary non-racial, non-discriminatory school system, it must be held unacceptable."

These Defendants respectfully submit that since the DeKalb County School System has committed itself to a complete unitary non-racial, non-discriminatory school system by the beginning of the 1969-70 school year, the "free transfer" privileges in effect in the past (but which have been progressively diminished and will be eliminated by the next school year) will further, rather than delay, the conversion. These Defendants in good faith have undertaken and accomplished these transitory progressive steps in such a manner as to avoid disrupting the educational processes of both Negro and white students. These Defendants have committed themselves and do hereby commit themselves to this Court to eliminate all school bus transportation across zone lines, with the exception of pupils in special schools; to discourage requests for transfers during the 1968-69 school year; and to notifying the general public that beginning with the school year 1969-70, the entire school system will be a unitary system. If this Court, in the light of the DeKalb County School System's progress and its commitment to the establishment of a unitary system by September, 1969, should feel that it is necessary to make a detailed examination into the techniques, which are being employed, or if the Court should have any suggestions to make as to how this commitment can be better implemented, Defendants will welcome such suggestions. The transition from a completely segregated school system to a completely unitary school system is being accomplished under the guidance of the Department of Health, Education & Welfare, which has been charged with the duty to implement the law with all possible speed. So far, real and substantial progress has been made without disrupting the educational processes of the students of all races. These Defendants have received from and have given to the Department of Health, Education, and Welfare full and complete cooperation in these matters. These Defendants respectfully submit that no preliminary or permanent injunction enjoining these

Defendants from operating the DeKalb County School System on a racially segregated basis would be appropriate, under the progressive transition toward a unitary school system. They further respectfully submit that it would be a meaningless act for this Court to order Defendants to seek a continuation of direct financial assistance from Federal funds because of the very definite fact that this System has, is and will continue to secure all such Federal assistance possible, and that there has never been a threat or intimation that such assistance will be terminated.

WHEREFORE, having fully answered, these Defendants pray that Plaintiffs' Complaint be dismissed and all costs of this action charged to the Plaintiffs.

/s/ Murphey Candler, Jr.
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

(Caption Omitted in Printing)

ORDER AND JUDGMENT

[Filed Jun. 12, 1969]

This case began as an in-depth undertaking to desegregate the public schools of DeKalb County, including students, faculties, and school activities. Since some 75,000 students are involved, occupying 77 elementary schools, 20 high schools, and nine special schools, a number of problems were presented. Happily for our task however, at the very time the action was filed and since that time the DeKalb County Board of Education was and has been working with the Department of Health, Education and Welfare to come up with what was to be a final and "terminal" plan of desegregation, which plan was to go into effect not later than the 1969-70 school year and which was to cover all aspects of the County's desegregation problems. After the suit was filed a preliminary hearing was held on October 11, 1968, at which time the plan proposed by the School Board had been given approval by HEW, subject to one exception to which reference will presently be made. A second hearing was held on April 9, 1969, by which time the proposed plan was substantially complete, and at that time counsel for all parties indicated their general approval of the plan except as it related to the Robert Shaw Elementary School.

Since the overall plan appears to be satisfactory to the School Board, to HEW, and to the plaintiffs, it would

serve no useful purpose to catalog its details here. The court therefore addresses itself to the one problem remaining open, viz.: the disposition to be made of the Shaw school, the plan proposed for that school being unsatisfactory both to HEW and to plaintiffs.

The school population of DeKalb County is roughly 94.4% white and 5.6% Negro, and at the heart of the entire problem were six schools, the populations of which were all predominantly Negro.[1] In brief, what the Board proposed with respect to all of these schools except Shaw, was to close them entirely and distribute their students among other schools in their respective neighborhoods. The plants of the closed schools would then be converted into special schools for advanced and retarded children, etc., on an integrated basis. With respect to the Shaw school, however, the Board proposed to retain it in operation, despite its predominantly Negro population. In support of this proposal the Board contended that housing and apartment developments in the neighborhood showed some promise of bringing more whites into the school area by September, 1969. They also promised to end a previously established policy permitting whites to transfer out of the Shaw attendance area, so that between these two proposals it was hoped that the Shaw situation would remedy itself at or during the 1969-70 school year. It was also pointed out in support of this proposal that the school had a fine physical plant, an excellent faculty, a good PTA, and very good community relations. Both HEW and the plaintiffs questioned this proposal as respects Shaw.

At subsequent hearings, held on April 30, 1969, and on May 28, 1969, evidence was taken as to the best disposition to be made of the Shaw school. Again all parties were in substantial agreement. Witnesses for the School

[1] These schools were Bruce Street, Linwood, Victoria Simmons, County Line, and Robert Shaw, all of which were elementary schools, and Hamilton High School.

Board admitted, for example, that their hopes for a racially balanced school population in the Shaw area were greatly optimistic, if not illusory. No single witness was of the opinion that the proposal advanced by the Board would or could put the Shaw school in compliance by the beginning of the 1969-70 school year. All parties, including counsel for plaintiffs and witnesses from the School Board and from HEW, did agree, however, that the Shaw school could be put in compliance in either one of two ways: (1) by abolishing the school and redistributing its population, as was being done with respect to the other five predominantly Negro schools, or (2) by either redrawing attendance lines or "pairing" Shaw with some other school so as to encompass larger white residential areas within its attendance zone. No one disputed or now disputes that either one of these proposals would bring Shaw into compliance.

The School Board still asks that it be allowed to retain Shaw in the hope that the population would balance itself, either at the beginning of or during the 1969-70 school year. The evidence, however, simply does not support this conclusion, and the court finds that the proposal by the Board to let the school continue on this basis is unsatisfactory. The only question presented, therefore, is which of the two workable alternatives shall be adopted.

Since either, under the evidence, will get the job done, the court concludes that as between closing the school on the one hand or redrawing its attendance lines or pairing it with another school on the other, the court should defer to the preference of the school authorities. HEW officials seem to feel that a redrawing of school lines would be the better solution. They agree, however, that under these circumstances the views of the School Board should be respected, and the Board prefers to close the school. In making this choice the Board contends, and the court agrees, that a redrawing of school lines in this

area or a pairing of Shaw school with some other school, while bringing about desegregation on a temporary basis, would almost certainly lead to resegregation within one to two years by reason of the white population moving out of the area. The court concludes, therefore, that the only solution offering any promise of permanency is to close the Shaw school as the Board suggests and distribute its pupils among neighboring schools, and an order to this effect will be entered.

There may be other details in the overall DeKalb County plan which will require further attention of the court, but as of the moment, this concludes the only issue of any consequence now to be decided.

JUDGMENT

It is therefore CONSIDERED, ORDERED, ADJUDGED, and DECREED that the defendants, their agents, officers, employees, successors, and all those in active concert and participation with them, be and they are hereby permanently enjoined from discriminating on the basis of race or color in the operation of the DeKalb County school system. As set out more particularly hereinafter, they shall take affirmative action to disestablish all school segregation and to eliminate the effects of the dual school system:

I. SPEED OF DESEGREGATION

Commencing with the 1969-70 school year, in accordance with this decree, all grades, including kindergarten grades, shall be desegregated and pupils assigned to schools in these grades without regard to race or color.

II. PUPIL ASSIGNMENT

A. *Zones.* All students in the system shall attend classes at schools located within the zone where they reside. Said zones shall be drawn so as to disestablish

the dual school system. For the 1969-70 school year, the zones in effect shall be those previously approved by the United States Department of Health, Education and Welfare. At all grades in schools within each zone, students will be assigned to home rooms and classes without regard to race.

B. *School Closings.* The following schools will be closed during the 1969-70 school year and thereafter until further order of the court: Robert Shaw elementary; Victoria Simmons elementary; County Line elementary; Lynwood Park elementary; Bruce Street elementary; and Hamilton High School. Students attending the schools to be closed will be placed in new attendance zones to be drawn without regard to race. The zones for all of the closed schools except Robert Shaw will be those previously filed with the court. The zone for Robert Shaw will be established no later than July 15, 1969, and submitted to the court. Defendants shall arrange for the conspicuous publication of a notice describing the new zones to be established in the newspaper most generally circulated in the community. Parents of children presently attending the schools to be closed shall be notified by letter of the new zone in which they reside. Such letters shall issue no later than July 20, 1969. Publication as a legal notice will not be sufficient. Copies of the notice must also be given to all radio and television stations located in the community. Copies of this decree shall be posted in each school in the school system and at the office of the Superintendent of Schools.

C. *Transfers.* No students will be permitted to transfer from schools within their attendance zones to other zones. Exceptions may be granted for non-racial reasons in the case of overcrowding, in the case of students who are physically handicapped and desire to attend a school designed for their special needs, and for students requiring a course of study not offered at the school serving their zone. However, if more than 30 students re-

quest transfer outside their zones to pursue a course of study, such transfers shall not be permitted; rather, a teacher or teachers shall be supplied within the zone to teach said courses.

D. *Overcrowding.* In case of overcrowding at any school, preference shall be given on the basis of proximity of the school to the homes of the students without regard to race or color. Standards for determining overcrowding shall be applied uniformly throughout the system.

III. CONSTRUCTION

To the extent consistent with the proper operation of the system, the County Board will, in locating and designing new schools, in expanding existing facilities, and in consolidating schools, do so with the objective of eradicating segregation and perpetuating desegregation.

IV. FACULTY AND STAFF ASSIGNMENTS

A. *Faculty Employment.* Race or color shall not be a factor in the hiring, assignment, reassignment, promotion, demotion, or dismissal of teachers and other professional staff members, including student teachers, except that race may be taken into account for the purpose of counteracting or correcting the effect of the segregated assignment of faculty and staff in the old dual system. Teachers, principals, and staff members shall be assigned to schools so that the faculty and staff is not composed exclusively of members of one race. Wherever possible, teachers shall be assigned so that more than one teacher of the minority race (white or Negro) shall be on the desegregated faculty. The County Board will continue positive and affirmative steps to accomplish the desegregation of its school faculties and to achieve substantial desegregation of faculties in its schools for the 1969-70 school year notwithstanding teacher contracts for 1969-70 may have already been signed and approved. The

tenure of teachers in the system shall not be used as an excuse for failure to comply with this provision. The County Board shall establish as an objective that the pattern of teacher assignment to any particular school not be identifiable as tailored for a heavy concentration of either Negro or white pupils in school.

B. *Dismissals.* Teacher and other professional staff members may not be discriminatorily assigned, dismissed, demoted, or passed over for retention, promotion, or rehiring, on the ground of race or color. In any instance where one or more teachers or other professional staff members are to be displaced as a result of desegregation, no staff vacancy in the school system shall be filled through recruitment from outside the system unless no such displaced staff member is qualified to fill the vacancy. If, as a result of desegregation, there is to be a reduction in the total professional staff of the school system, the qualifications of all staff members in the system shall be evaluated in selecting the staff member to be released without consideration of race or color. A report containing any such proposed dismissals, and the reasons therefor, shall be filed with the Clerk of the court, serving copies upon opposing counsel, within five days after such dismissal, demotion, etc., as proposed.

C. *Past Assignments.* The County Board shall take steps to assign and reassign teachers and other professional staff members to eliminate the effects of the dual school system.

V. REPORTS

A. On June 10 of each year, beginning in 1970, defendants will submit a report to the court and serve copies on opposing counsel, showing the number of teachers by schools, grade (where appropriate), and race they anticipate will be employed for the fall quarter or semester. Within one week after the day classes begin for

the fall quarter or semester in 1969 and each succeeding year defendants will submit a report to the court and serve a copy on opposing counsel, showing the number of teachers actually working at each school by grade (where appropriate) and race.

B. On the same dates set forth in A. above, reports will be submitted to the court, and a copy served on opposing counsel, showing the number of students by school, grade, home room, and race expected (in June report) and actually enrolled (in fall report) at the schools in DeKalb County.

C. Within one week after the opening of each school year, defendants shall submit a report to the court and serve copies on opposing counsel, showing the number of faculty vacancies, by school, that have occurred or been filled by defendants since the order of this court or the latest report submitted pursuant to this subparagraph. This report shall state the race of the teacher employed to fill each such vacancy and indicate whether such teacher is newly employed or was transferred from within the system. The tabulation of the number of transfers within the system shall indicate the schools from which and to which the transfers were made. The report shall also set forth the number of faculty members of each race assigned to each school for the current year.

VI. SERVICES, FACILITIES, ACTIVITIES AND PROGRAMS

No student shall be segregated or discriminated against on account of race or color in any service, facility, activity, or program (including transportation, athletics or other extra-curricular activity) that may be conducted or sponsored by the school in which he is enrolled. A student attending school for the first time on a desegregated basis may not be subject to any disqualification or waiting period for participation in activities and pro-

grams, including athletics, which might otherwise apply because he is a transfer or newly assigned student except that such transferees shall be subject to long-standing, nonracially based rules of city, county or state athletic associations dealing with the eligibility of transferred students for athletic contests. All school use or school-sponsored use of athletic fields, meeting rooms and all other school related services, facilities, activities, and programs such as commencement exercises and parent-teacher meetings which are open to persons other than enrolled students, shall be open to all persons without regard to race or color. All special educational programs conducted by the County Board shall be conducted without regard to race or color. Athletic meets and competitions and other activities in which several schools participate shall be arranged so that formerly white and formerly Negro schools participate together.

VII. SCHOOL EQUALIZATION

A. *Inferior Schools.* In schools heretofore maintained for Negro students, the defendants shall take prompt steps necessary to provide physical facilities, equipment, courses of instruction, and instructional materials of quality equal to that provided in schools previously maintained for white students. If for any reason it is not feasible to improve sufficiently any school formerly maintained for Negro students, where such improvement would otherwise be required by this paragraph, such school shall be closed as soon as possible, and students enrolled in the school shall be reassigned.

B. *Remedial Programs.* The defendants shall provide remedial education programs which permit students attending or who have previously attended segregated schools to overcome past inadequacies in their education.

VIII. JURISDICTION

This court retains jurisdiction for the purpose of implementing this order.

This 12th day of June, 1969.

/s/ Newell Edenfield
NEWELL EDENFIELD
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

(Caption Omitted in Printing)

OPINION AND ORDER

[Filed Nov. 3, 1976]

In June 1969 this court entered an order in the above-entitled action enjoining the defendants from discriminating on the basis of race in the operation of the DeKalb County school system. The court retained jurisdiction over the case for the purpose of implementing its order. In September 1975 and August 1976 [1] this court held hearings upon the complaints of a group of citizens that the DeKalb County school system was out of compliance with the court's 1969 order. Basically these citizens (movant-plaintiffs) alleged (1) that defendants were violating the order with regard to the majority-to-minority transfer program; (2) that defendants were violating the order with regard to assignment of teachers and administrative personnel to the county's schools; and (3) that changes in attendance zones were effecting resegregation. The court is now prepared to state its findings and conclusions as to these claims.

Before turning to the merits of these charges the court must first address defendants' contentions concerning the procedural posture of the parties to this action. Defendants argue that the instant suit may not be maintained as

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[1] The delay was occasioned in part by the fact that, due to one tragic accidental death and the removal of two lawyers from the State, the plaintiffs went for several months without local counsel.

a class action, and further, that the instant case has become moot. This action was originally filed on behalf of two classes: all adult Negro citizens and their minor children who reside in DeKalb County, and all adult white citizens and their minor children residing in DeKalb County. Although the court has repeatedly referred to the plaintiffs herein as a class, no "class" has ever been properly certified by this court within the meaning of Rule 23 of the Federal Rules of Civil Procedure which became effective January 1, 1974. Even though the court held in 1969 that its jurisdiction over the case would continue, defendants claim that inasmuch as the original named plaintiffs are no longer enrolled in the DeKalb school system, this action should now be dismissed as moot. *Pasadena City Board of Education v. Spangler*, 440 U.S.L.W. 5114, 5115 (June 29, 1976); *Indianapolis School Commissioners v. Jacobs*, 420 U.S. 128, 130 (1974).

It appears, however, that one of the named plaintiffs is still a student in the DeKalb County schools, and as to this student, the case is still a live controversy. Accordingly, the court will interpret the movant-plaintiffs' petition for relief under the 1969 order as a motion to intervene, joining the original named plaintiff. The Fifth Circuit has held that intervention

> ". . . is the proper course for parental groups seeking to question current deficiencies in the implementation of desegregation orders. . . . The petition for intervention would bring to the attention of the district court the precise issues which the new group sought to represent and the ways in which the goal of a unitary system had allegedly been frustrated. The district court could then determine whether these matters had been previously raised and resolved and/or whether the issues sought to be presented by the new group were currently known to the court and parties in the initial suit. . . . If the court felt

> that the new gorup had a significant claim which it could best represent, intervention would be allowed." *Hines v. Rapides Parish School Board*. 479 F.2d 762, 765 (5th Cir. 1973).

The court finds that the movant-plaintiffs, Monica Rocker, et al., satisfy the requirements for intervention under *Hines* and therefore ALLOWS the movant-plaintiffs to intervene in the instant action. Rule 24(b), Fed.R.Civ.P.

The court further finds that the named movant-plaintiffs represent a class of unnamed individuals capable of being certified within the meaning of Rule 23, Fed.R.Civ.P., and hereby CERTIFIES the class under Rule 23(b)(2) as consisting of all black citizens and their minor children residing in DeKalb County, *cf. Pasadena City Board of Education v. Spangler, supra* at 5115. Although the named plaintiffs all reside in the southern part of the county, the court finds that the named plaintiffs and their attorneys have and will adequately represent the interests of the black residents throughout the county.

Factual Background

M-to-M Program

The DeKalb County school system is currently operating a majority-to-minority (M-to-M) transfer program. Under this program any student attending a neighborhood school in which his race is in the majority may transfer to a school where his race is in the minority under the following conditions: the receiving school must have the capacity to hold an additional student, and the M-to-M student may not transfer to a school in which the minority race comprises more than 40% of the student body. Additionally, the student may transfer only to the "next closest school" in which space is available and in which the minority race is less than 40%.

A parent wishing to have his student transferred under M-to-M must apply for such transfer through the principal of the student's neighborhood school. The parent is then told which school or schools qualify as the "next closest school" to the neighborhood school. The parent may then apply to the principal of one of these next nearest schools for a transfer. The decision as to whether the student may transfer is made by the principal of the proposed receiving school and is based solely on whether the school has the capacity and meets the 40% requirement. No exceptions to these rules are made, for example, to allow members of one family to attend the same receiving school, if to do so would increase the minority population of the school over 40%. If the proposed transfer school does not meet these requirements, the parent is advised of the *next* nearest school which would satisfy these standards.

At the commencement of each school term, every student is required to register at his neighborhood school. A student who has been attending another school the previous year under M-to-M must still register at his neighborhood school and reapply for an M-to-M transfer to the school he had previously attended. If over the course of the year that receiving school has become overcrowded or has passed the 40% mark, the student will not be allowed to reenter the receiving school but must either return to his neighborhood school or attend the next available nearest school.

Some parents desire to send their children to schools other than the next nearest school under the M-to-M program, claiming that certain schools in the county are better than others. A study of standardized achievement test results in the lower grades indicates that the average scores are generally higher in those schools which have a high predominance of white students than in those so-called "target" schools which are almost completely black in the southern part of the county. The distribution of

reading and math resources, such as specialists and paraprofessionals, indicates that those target schools receive a higher percentage of such resources than certain predominantly white schools, although certain reading resources for advanced readers are not now present in these target schools. These latter resources, however, are capable of being moved among schools as the need for them arises. A comparison of selected aspects of the predominantly black schools in the southern part of the county with selected predominantly white schools in the county shows no apparent trend of superiority among any group of schools. These aspects included number of library books, average number of years of staff education and experience, and pupil expenditures for staff per individual school.

For the 1975-76 school term, 96 students exercised the M-to-M option; two students' requests for M-to-M transfers were rejected. As of August 16, 1976, 27 students had transferred under the M-to-M program, and three requests for such transfers were rejected for the 1976-77 term.

The school system provides bus transportation for all those students who live more than a mile from their neighborhood school and is reimbursed by the state for transportation provided to students living over a mile-and-a-half from their neighborhood school. No transportation is currently provided to students who exercise the M-to-M option and attend a school other than their neighborhood school, nor are M-to-M students reimbursed for expenditures made for self-transportation.

Faculty

Out of the total number of faculty positions in DeKalb County, approximately 15% are held by black teachers in the elementary schools and 13.6% in the high schools for the 1976-77 school year; 32.4% of the newly hired teach-

ers are black in the elementary schools, 33.1% in the high schools. To fill a vacant position in a school that has fewer than the system-line average of black teachers, only black applicants are sent to the school for interviews.

The percentage of black teachers in individual schools in the county ranges from 6.9% to 48.3% in the elementary schools, and from 9.8% to 25% in the high schools. Those schools with the highest percentage of black teachers generally also have the greatest predominance of black students. For example, the faculty at Leslie J. Steele Elementary School is 43.3% black, while its student body is 98% black. At Terry Mill Elementary School the proportion of black teachers is 44.1%, while its student body is 98% black. Conversely, at Montgomery Elementary, where 12% of the students are black, only 6.9% of the faculty are black.

Two reasons were supplied by the Associate Superintendent for Community and Staff Relations to explain the higher concentration of black teachers in the more predominantly black schools: (1) teachers living near those schools prefer to teach in a school near their homes and (2) principals desire to have more teachers who are the same race as most of the students so that the students have someone to "relate to". Involuntary transfers are rarely used to alter the distribution of teachers in the individual schools.

Attendance Zone Changes

A number of attendance lines changes were instituted in the southwest portion of DeKalb County in 1974 and 1975. This same area has experienced an increase in the percentage of black students, due to the influx of black families and the departure of white families from the area. The general pattern of transition is for the black residential area to proceed on a circumference which has been expanding, year to year, from the Atlanta city limits

into DeKalb County. The transitional area has been moving from northwest to southeast. Accompanying this transition has been an increase in the ratios of black students in the schools in this area. For example, the area served by Clifton, Meadowview, and Cedar Grove (formerly Bouldercrest) elementary schools, has changed from 7.4% black students in 1972 to 50% black students in 1975.

Major alterations in elementary school zones were implemented in 1974 and 1975 affecting the area covered by the above-mentioned schools. The primary factor motivating these changes was the closing of the Bouldercrest school which had been built on a site too small by state standards. The site for a new school (Cedar Grove) had been chosen in 1969, before this court's previous order, and at a time when the population in the entire southwest portion of the county was 98% white. There is no claim of impropriety in the choosing of the Cedar Grove site.

The building of the new school necessitated boundary line changes because the Cedar Grove site was located within the Clifton attendance zone. Prior to the change, both the Bouldercrest and Clifton school zones extended southward to the Clayton and Henry county lines. The Meadowview school zone formed an immediate circumference around that school. In January 1974, the new school zone which would be served by Cedar Grove was announced. It encompassed the predominantly white southern halves of the Bouldercrest and Clifton school zones, lying below the South River and Interstate 285. Most of the upper half of the old Bouldercrest zone was added to Meadowview, except that portion immediately surrounding Bouldercrest school. The former Clifton zone was cut off at the South River and was pushed back into almost half of the original Meadowview zone. Since the new Cedar Grove school could not be ready as planned for the fall of 1974, students in the new Cedar Grove district attended the old Bouldercrest school for the 1974-75

term, accompanied by the students residing in the area immediately surrounding Bouldercrest.

When the zone change was made, Clifton went from 29.6% black (in June 1974) to 63.4% black (in September 1974); Meadowview went from 51.8% black to 58% black; Bouldercrest changed from 7% to 14% black. In the fall of 1975, the new Cedar Grove Elementary School was opened, and the area immediately surrounding the Bouldercrest school was zoned into the Clifton zone as originally planned. With this change Clifton's black population increased from 67% (as of June 1975) to 77% (as of September 1975); Meadowview changed from 62% to 67% black; and Bouldercrest's, now Cedar Grove's, black population decreased from 14% to 12%. The net effect of the changes meant that the two older schools would now serve the predominantly black population in the northern part of the area, and the new school would service the predominantly white students to the south. It is impossible to determine, however, to what extent changes in the racial composition of the schools was affected by changes in the racial composition of the residential areas encompassed by these school zones.

The high schools in this area were also subject to zone changes and substantial shifts in their racial ratios during the years 1971 to 1975. The area now served by Gordon, Walker, and Cedar Grove high schools has changed from 22% black students in 1971 to 70% black students in 1975. The building of a new high school, Cedar Grove, in 1972, was again the major cause of attendance zone changes. The new school was built to relieve overcrowing in Walker and Gordon high schools which formerly served the area, and to reduce the distance traveled for students in the south part of the county. Cedar Grove was built on available land adjacent to the new elementary school, and there is no allegation of impropriety in the location of this school.

In 1971, the year before Cedar Grove High School opened, Gordon was 45% black and Walker was 3.9% black. Columbia and Southwest DeKalb, surrounding schools also affected by the building of Cedar Grove, each were 2.7% and 4.5% black, respectively. The new Cedar Grove school zone cut off the southern portions of the Walker and Gordon zones, constricting those zones to the area north of Interstate 285.

In 1974, additional zone changes were made affecting these high schools. Gordon's southern boundary was pushed further north to I-20, and the racially mixed residential area remaining went to Walker. Cedar Grove's zone, which originally extended past I-285, was constricted south of I-285. The Walker zone absorbed this area and now completely separated the Cedar Grove zone from the Gordon zone. Gordon's black population went from 89% in September 1973 to 92% in June 1974, and 97% in September 1974. Over this same period, Walker went from 35% to 43% and 60% black. Cedar Grove's black population remained at 14-16% during this period.

An additional zone change was made for the 1975-76 school term whereby part of Southwest DeKalb's attendance area (1% black), which had become overcrowed, was zoned into Cedar Grove, which was under capacity. The area rezoned was primarily white. At the time of the zone change Columbia (then just under 50% black) was also under capacity.

The court cannot determine, as to these high school boundary-line changes, to what extent shifts in residential patterns affected the rate of change in the racial compositions of the schools.

Legal Discussion

M-to-M Program

In its June 1969 order, this court held that defendants "shall take affirmative action to disestablish all school segregation and to eliminate the effects of the dual school

system." *Pitts v. Cherry*, No. 11946 (N.D. Ga., June 12, 1969). For the past few years, the DeKalb school system has operated an M-to-M program, outlined above, as such an affirmative action. Although the program technically violated the 1969 order which prohibited transfers of students outside their respective attendance zones, M-to-M transfer programs were given approval by the Supreme Court in *Swann v. Charlotte-Mecklenberg Board of Education*, 402 U.S. 1, 26 (1971):

> "An optional majority-to-minority transfer provision has long been recognized as a useful part of every desegregation plan. Provision for optional transfer of those in the majority racial group of a particular school to other schools where they will be in the minority is an indispensable remedy for those students willing to transfer to other schools in order to lessen the impact on them of the state-imposed stigma of segregation."

The current operation of the DeKalb M-to-M program, however, imposes impermissible burdens upon those students wishing to take part in the program, discouraging widescale use of this desegregation tool. A student wishing an M-to-M transfer, for example, faces a substantial amount of unnecessary red tape before his transfer may be effected. The student must go through the same administrative process each year, never becoming a permanent student in the transferree school.

Even greater constraints are placed on M-to-M transferees and their parents in terms of the permissible schools into which students may transfer and the lack of transportation provided to get the transferees to those schools. Defendants justify the "next nearest school" requirement for M-to-M transfers as preserving the neighborhood school concept as much as possible. As the Supreme Court stated in *Swann, supra*, "All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their

homes. But all things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation." 402 U.S. at 28. In the instant case, due to the racial distribution in DeKalb County, the next nearest school limitation may compel a student to transfer to a school whose racial composition is only marginally different from his neighborhood school, a difference perhaps not worth the transfer.

Defendants have offered to alter the present program by requiring that a student may transfer only to the next nearest school where his race comprises no more than 15% of the student body. Defendants contend that this will accommodate the preferences of many of the named movant-plaintiffs to transfer to the more predominantly white schools. However, this same limitation will inhibit students who desire to attend a school where their race is in the minority, but which is also close to their homes.

The purpose of the current 40% requirement, and presumably the proposed 15% figure, is actually to prevent those schools from "tipping", or rapidly becoming predominantly black schools. Defendants have cited no authority, nor can this court find any support, for the use of such limitations in an M-to-M program to retard any change in the racial composition of a school in this manner. In fact, the implication from *Swann* is that very few restrictions should be imposed upon a student desiring to participate in an M-to-M transfer: "In order to be effective . . . space must be made available in the school to which *he desires to move*." 402 U.S. 26-27 (emphasis added). Currently, a student may transfer only to a qualifying school where space is available, and is given no priority over other students. The effect may often be to preclude a child from attending his transferee school the following year if space in that school becomes unavailable. The Fifth Circuit has held, however, that under M-to-M programs, "a transferee is to be given

priority for space." *Singleton v. Jackson Municipal Separate School District*, 426 F.2d 1364, 1369 (5th Cir. 1970). *See Lee v. Macon County Board of Education*, No. 70-251 (N.D. Ala., Aug. 27, 1976), slip opinion at 26.

The effectiveness of an M-to-M program is also dependent upon the provision of free transportation. *Swann v. Board of Education*, 402 U.S. 26-27; *United States v. Greenwood Municipal Separate School District*, 460 F.2d 1205 (1972). The lack of transportation for transferees under the present DeKalb plan forces the students and "their parents to shoulder the burden of eliminating these vestiges of segregated schools," *United States v. Greenwood*, *supra*, 460 F.2d at 1207, and, in fact, makes it impossible for some students to participate in the program.

Defendants complain that if the next nearest school rule is eliminated, and free transportation is required, the school system will be faced with an unreasonable and unfeasible task of transporting select students to different schools all across the county. Before it is known how many students will participate in a revised M-to-M program, however, such fears are purely speculation.

Defendants also raise a general objection to any revisions made by this court in the voluntarily-established M-to-M program. Defendants maintain that they have complied with the specific mandates of this court's 1969 order and are now operating a unitary school system. Therefore, the court is without power, defendants argue, to make any changes in the school program which accomplishes the intentions of the previous order. *Pasadena City Board of Education v. Spangler*, *supra*, 440 U.S.L.W. at 5117. However, this court has never made any finding that defendants are operating a unitary system, and finds instead that the regulations imposed under

the M-to-M program perpetuate the vestiges of a dual system.

Defendants also rely upon the Equal Educational Opportunity Act of 1974, 20 U.S.C. §§ 1701, *et seq.*, to block the above-mentioned changes in their M-to-M program. The Act, which emphasizes that "the neighborhood is the appropriate basis for determining public school assignments," 20 U.S.C. § 1701(b), also states that

> "No court . . . shall . . . order the implementation of a plan that would require the transportation of any student to a school other than the school closest or next closest to his place of residence which provides the appropriate grade level and type of education for such student."

The Act also makes clear, however, that its provisions are "not intended to modify or dimish the authority of the courts of the United States to enforce fully the fifth and fourteenth amendments to the Constitution of the United States." 20 U.S.C. § 1702(b). This court, therefore, retains its equitable powers to remedy past wrongs, the scope of which "is broad, for breadth and flexibility are inherent in equitable remedies." *Swann*, *supra*, 402 U.S. at 15. In analyzing the impact of the Educational Act upon the court's equitable powers, the First Circuit stated in *Morgan v. Kerrigan*, 530 F.2d 401, 412-13 (1st Cir. 1976),

> "By explicitly leaving the district court the power to determine the adequacy of remedies, the Act necessarily does not restrict the breadth of discretion of that court to determine what scope of remedy is constitutionally required. Thus the Act manifests its purpose not to limit judicial power but to guide and channel its exercise. In a sense it is a statutory 'less restrictive means' guideline, endeavoring to ensure that substantial compulsory transportation be used as a last resort."

It should be noted that the revisions of the M-to-M program contemplated by this court do not involve a program of forced busing, a remedy which the Act seeks to discourage, but a program which will provide transportation for those students who volunteer to transfer to a school in which their race is in the minority. So long as the school system operates its M-to-M program, this court finds that transportation and other revisions are constitutionally required so that the program will provide equal educational opportunities while helping to eliminate the vestiges of a dual school system in DeKalb County, *cf. Morgan v. Kerrigan, supra*, 530 F.2d at 413.

Teacher Assignments

This court held in its 1969 order that

> "Race or color shall not be a factor in the hiring, assignment, reassignment, promotion, demotion, or dismissal of teachers and other professional staff members, including student teachers, except that race may be taken into account for the purpose of counteracting or correcting the effect of the segregated assignment of faculty and staff in the old dual system." (Slip opinion at 7.)

The court accordingly required that "[w]herever possible, teachers shall be assigned so that more than one teacher of the minority race (white or Negro) shall be on the desegregated faculty." *Id.* The defendants have more than complied with this explicit requirement. However, the court also mandated that the

> "County Board shall establish as an objective that the pattern of teacher assignment to any particular school not be identifiable as tailored for a heavy concentration of either Negro or white pupils in the school . . . . [and] shall take steps to assign and reassign teachers and other professional staff members to eliminate the effects of the dual system." (Slip opinion at 8.)

The court finds that the defendants have not taken adequate steps to utilize reassignment of teachers to reduce the racial identifiability of faculty in accordance with the standard set out in *Singleton v. Jackson Municipal Separate School District, supra.* In *Singleton*, the Court of Appeals for the Fifth Circuit held that in order to reduce racial identifiability of a faculty, staff should be assigned so that the ratio of black to white teachers in each school is "substantially the same" as such ratio throughout the entire school system. 419 F.2d at 1218.

Defendants ask that the court compare the facts in the instant case with *Ellis v. Board of Public Instruction of Orange County*, 423 F.2d 203, 205 (5th Cir. 1970), where the court found the school system to be in compliance with *Singleton*, despite the existence of racial ratios in individual schools twelve percentage points higher than the racial ratio of the entire school system. While the court is aware of the problems inherent in requiring that the teachers at any school be maintained at an exact arbitrary racial ratio, *United States v. Wilcox County Board of Education*, 494 F.2d 575 (5th Cir. 1974), the current 40-48% of black teachers in some of the more predominantly black elementary schools does not even "approximate" the 15% system-wide ratio. *See Carter v. West Feliciana Parish School Board*, 432 F.2d 875, 876 (5th Cir. 1970).

A significant reason for the wide disparity in the racial ratios amongst schools in DeKalb County is the reliance on the replacement process, and the avoidance of reassignments to even out the distribution of faculty. The court finds that this system does not comply with the *Singleton* standard, nor with this court's 1969 order which required reassignment of teachers to eliminate the effects of the dual school system. Accordingly, reassign-

ment of teachers must be utilized to make the racial ratio of the faculty in individual schools truly *substantially* similar to the system-wide ratio, *Lee v. Macon County Board of Education, supra,* slip opinion at 23.

Attendance Zone Changes

In its previous order, this court held that

> "[T]o the extent consistent with the proper operation of the system, the County will, in locating and designing new schools, in expanding existing facilities and in consolidating schools, do so with the objective of eradicating segregation and perpetuating desegregation."

Plaintiffs contend, however, through a report prepared for the court by the Department of Health, Education and Welfare, that the "DeKalb County School System, in its response to racial transition, ignored its responsibility to affirmatively eradicate segregation and perpetuate desegregation." HEW Report, at 11. Specifically, plaintiffs argue that the school zone changes made by defendants have resulted in racially identifiable schools.

Defendants counter by stating that the increasing number of racially identifiable schools in the southwest section of DeKalb County has been caused not by the zone changes implemented by the board, but by the natural population transition which has occurred in the residential sections of that area. Defendants further argue that having implemented the 1969 desegregation order, they cannot be held responsible for residential patterns that have developed since that order. Defendants rely upon *Swann, supra,* wherein the court stated

> "Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies since the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system. This does not mean that federal courts are without power to deal with future problems; but in the absence of a showing that either the school authorities or some other agency of the state has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools, further intervention by a district court should not be necessary."

Defendants also point to the recent case of *Pasadena Board of Education v. Spangler,* 44 U.S.L.W. 5114 (June 29, 1976), which involved the subsequent interpretation of a desegregation plan entered by a district court in 1970. The court-approved plan required that no school have a majority of minority students. Within two years of the entry of the order, changes in the residential patterns in the area caused some schools to have a black enrollment in excess of 50%. The Supreme Court found that although the school system had not yet achieved the unitary system contemplated by the above-quoted language from *Swann,*

> "* * * * [T]hat does not undercut the force of the principle underlying the quoted language from *Swann.* In this case the District Court approved a plan designed to obtain racial neutrality in the attendance of students at Pasadena public schools. No one disputes that the initial implementation of this plan accomplished that objective. That being the case, the District Court was not entitled to require the School District to rearrange the attendance zones each year so as to ensure that the racial mix desired by the court was maintained in perpetuity." *Id.* at 5117.

In *Pasadena,* once the initial desegregation order had been implemented, changes in residential patterns and resulting shifts in the racial makeup of schools were unaffected by any actions taken by school officials, because

no official action was taken. It is for this reason that the district court in *Pasadena* was forbidden from ordering school officials to restructure attendance lines.

Different considerations are relevant, however, when shifts in residential patterns are accompanied by alterations in attendance lines made by school officials. The Supreme Court has held that

> "* * * * [A]ny attempt by state or local officials to carve out a new school district from an existing district that is in the process of dismantling a dual school system 'must be judged according to whether it hinders or furthers the process of school desegregation. If the proposal would impede the dismantling of a dual system, then a district court, in the exercise of its remedial discretion may enjoin it from being carried out.'" *United States v. Scotland Neck Board of Education*, 407 U.S. 484, 489 (1981), quoting *Wright v. Council of Emporia*, 407 U.S. 451, 460 (1971).

In the instant case new boundary lines were drawn with the building of Cedar Grove elementary and high schools. At the same time, schools in that area experienced substantial changes in their racial composition. This court must look to whether such boundary-line changes had the effect of impeding desegregation in these schools. Of course, such inquiry cannot ignore the racial transition occurring in this area apart from any zone changes.

The court must pursue this examination despite its finding that boundary-line changes were made for the most part to accommodate the new schools which had been built to relieve overcrowding. In determining whether a school board's action is permissible, courts have "focused upon the effect—not the purpose or motivation" of such action on the dismantling of a dual system. "The existence of a permissible purpose cannot sustain an action that has an impermissible effect." *Wright v. Council of Emporia, supra*, 407 U.S. at 462.

In applying this test to the facts as found by the court, it is apparent that the redrawing of elementary school lines in southwest DeKalb had some effect upon the perpetuation of a dual system in the county. Over the course of one summer, Clifton went from 30% to 63% black. Surely the influx of black families and departure of white families accounted for some of the increase. But the redrawing of attendance lines along I-285 and the South River must have contributed somewhat to this dramatic increase. Additionally, it must be said that the total effect of the horizontal boundary lines drawn to accommodate these three elementary schools was to ensure that one predominantly white school, Cedar Grove, would remain predominantly white for a number of years.

Although the school board's actions may have had these effects, its zoning decision must also be scrutinized in the context of the circumstances existing at the time and the feasibility and practicality of available alternatives. For it is only the availability of more promising courses of action to dismantle a dual system that "places a heavy burden upon the board to explain its preference for an apparently less effective method." *Green v. County School Board*, 391 U.S. 430, 439 (1967), *Wright v. Council of Emporia, supra*, 407 U.S. at 467.

At the time these attendance zone changes were made, the Cedar Grove site had already been chosen, and the choice was made at a time when the racial composition of the area was almose completely white. As it developed, it was the location of this new school, accompanied by a transition in the residential patterns in the area, which had the effect of perpetuating a dual system, because the school site dictated to a large extent the placement of the new attendance lines. The propriety of the selection of the Cedar Grove site, however, is not in question.

Even so, plaintiffs, supported by HEW, contend that, given the location of the Cedar Grove Elementary School,

attendance lines could have been drawn in such a way as not to accentuate the racial identifiability of the schools. HEW's report suggests that since blacks reside primarily north of I-285 and the South River, and most white are located to the south of those lines, drawing boundary lines vertically, like some of the original lines, as opposed to the horizontal lines chosen by the defendants, would have created more racially balanced zones. However, HEW's report fails to consider the exact location of families south of I-285 and the South River. For with the exception of the predominantly black County Line community, just north of Henry County, most of the population clusters towards the center of this area. The drawing of vertical lines would thus have had little effect upon the racial makeup of the school. In fact, because of the residential patterns in southwest DeKalb as of 1973-74, and because of the location of Meadowview, Clifton and Cedar Grove within those patterns, only the drawing of extremely gerrymandered lines would have resulted in more racially balanced schools. Such gerrymandering would have created large travel distances for students and would have been generally impractical. In light of the circumstances existing at the time these zone changes were made, it cannot be said that such changes were constitutionally impermissible.

The same is largely true with respect to changes in high school attendance zones. The location of the Cedar Grove High School mandated to a certain degree the establishment of a predominantly white school because of Cedar Grove, and two predominantly black schools, because of the residential transitions occurring in that area. The alternative of vertical boundary lines, suggested by HEW, was virtually impossible because Cedar Grove High School is located directly below Gordon.

Plaintiffs and HEW, however, also complain about certain changes that were made *after* the Cedar Grove school had opened and the area had been rezoned accordingly. As to these changes, there appear to have been alternatives—among them, to make no change at all—and defendants have not adequately met the heavy burden of explaining the alternatives chosen which tended to hinder, rather than further, desegregation. Specifically, the zone changes in 1974 which constricted Gordon to the area north of I-20 and moved Cedar Grove's northern boundary to I-285, with the area in between going to Walker, had the effects of (1) increasing Gordon's already predominantly black population, (2) isolating the Cedar Grove area from the path of residential transition, with Walker serving as a buffer zone, and (3) helping Walker to tip over to a predominantly black school. Defendants justify the Cedar Grove boundary change by demonstrating that 35 out of 43 students removed from Cedar Grove as a result of the rezoning were white. Yet, defendants could clearly see that this area rezoned from Cedar Grove to Walker was in the direct path of residential transition and was becoming increasingly black. Defendants have offered no further justifications for their zone changes.

Another contested boundary line change occurred in 1975 when part of Southwest DeKalb's attendance area was zoned into Cedar Grove to relieve overcrowding in Southwest DeKalb. The zone change split a subdivision down the middle and created traveling distances of up to five-and-a-half miles for some of the rezoned children. HEW points out that, like Cedar Grove, Columbia was also under capacity and a largely white area between I-20, Candler Road and I-285 could have been rezoned from Southwest DeKalb into Columbia. Such a change would have impeded Columbia's transition towards becoming another predominantly black school, and, in addition, the maximum travel distance for a rezoned child would be only two-and-a-half miles. Therefore, in an attempt to relieve overcrowding in one school, defendants failed to choose an available alternative which would have also furthered desegregation.

There are two problems with a finding by this court that the above boundary changes had the effect of hindering the process of desegregation within the meaning of *Wright*, *supra*. First, because of the rapid residential transition occurring throughout this section of the county, and affecting the racial ratios of schools in which no zone changes have been made, it is impossible to determine whether the zone changes in question actually accelerated the transition at one extreme, or whether they had little effect on the process of desegregation which was in fact impeded by a natural process of residential transition. The second problem is that even were the court to find the former to be true and conclude that therefore the boundary changes were impermissible, an injunction against their imposition at this point in time would be meaningless. The percentage of blacks in this area has increased dramatically and, as the HEW report admits,

> "Because of this concentration of black students, we believe consideration of remedies would have to look beyond mere alteration of school zone lines in the area schools." HEW Report, at 11.

Whatever indeterminable effect the aforementioned zone changes have had on the process of desegregation in this portion of DeKalb County, the actions of the defendants in making these changes do not justify the ordering of a remedy which would go beyond the alteration of school zone lines. The court does wish to ensure, however, that any future zone changes as well as the purchase of any new school sites are made so as to have the effect of furthering as opposed to hindering desegregation. Accordingly, a biracial committee will be established which will, as part of its functions, approve such zone changes and school site purchases. *Singleton v. Jackson Municipal Separate School District*, *supra*, 426 F.2d at 1370; *Ellis v. Board of Public Instruction*, 423 F.2d 203, 207, n.4 (5th Cir. 1970).

ORDER

For the foregoing reasons, the court hereby ORDERS that:

(1) The M-to-M program be modified so that any student may transfer from a school where his race is in the majority to any other school within the county in which his race is in the minority. Space must be made available in the receiving schools for transferees who shall be given priority for space over new students, but in no instance shall a transferee displace a student previously enrolled in the receiving school.

(2) Such M-to-M transfer shall be effected by as simple an administraitve procedure as possible. The school system will provide M-to-M transfer forms at the student's neighborhood school. The student's parent or guardian must, under usual circumstances, complete the form on or before May 1 of the school year preceding the school year for which the student desires to participate in the M-to-M program. The school system shall provide the student with a copy of the form which shall be presented to the receiving school by the student on the annual registration day.

(3) The school system shall publicize the M-to-M transfer procedure by paid advertisements in local newspapers; news releases to all media; brochures available at each school; and notices placed in school newsletters and newspapers no later than March 15 of each year. Such publicity shall be followed by notices sent to each parent or guardian no later than March 31 of each year.

(4) Any student may exercise a majority-to-minority transfer once during the student's elementary career and once during the secondary school career. Once a transfer is effected, the transferee need not reapply for the transfer each year. If the student's race becomes a majority in the receiving school, he may (a) remain at the receiv-

ing school; (b) return to his neighborhood school; or (c) transfer to another school in which his race does not comprise more than a majority of the student body.

(5) Transportation shall be provided at the expense of the school system to any M-to-M student who so requests and who lives more than one mile from the receiving school. Defendants may seek modification of this provision of the order if, based on the number of students electing to exercise M-to-M transfers and the receiving schools chosen, a workable plan of transportation proves impossible.

(6) These changes in the M-to-M program shall be implemented for trasfers beginning with the 1977-78 school term. Students wishing to participate in the program for the remainder of the 1976-77 school term, may transfer to a school which qualifies under the provisions of this order and in which there is space available. Transferees must provide their own transportation for the balance of the 1976-77 school term.

Distribution of Faculty

(7) The ratio of black to white teachers in each school must be substantially similar to the system-wide racial ratio. Defendants are required to reassign teachers with all deliberate speed so that the racial distribution of faculty in *all* schools approximates the distribution of faculty in the entire school system.

Biracial Committee

(8) A biracial committee shall be established which shall oversee the operation of the M-to-M program as modified by this order. The committee's approval must also be secured on any proposed school zone changes or school site purchases. The committee is to be constituted by this court from names submitted by parties to this suit. The number of members will be determined by this

court and shall consist of no more than 20 nor less than ten members. The membership shall be equally divided between whites and blacks and the chairmanship shall alternate annually between a white and a black chairman. The committee shall make annual reports to the court concerning the functioning of the M-to-M program and any other action taken by the committee on proposed attendance zone changes or school purchase sites.

IT IS SO ORDERED.

This 3rd day of November, 1976.

/s/ Newell Edenfield
NEWELL EDENFIELD
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

(Caption Omitted in Printing)

ORDER

[Filed Jan. 31, 1977]

This civil rights action is presently before the court on plaintiffs' motion to alter or amend this court's November 3, 1976 order pursuant to 56(e). Specifically, plaintiffs ask (1) that the order's ruling with respect to reassignment of faculty be extended to apply to principals, administrators and other staff members; (2) that such reassignments take place prior to the beginning of the 1977-78 school term; (3) that the M-to-M program be amended to address the problem of students entering the school system mid-year; (4) that students be allowed to transfer under M-to-M at the end of any quarter; and (5) that the limitation on the number of transfers a student may make during the course of his elementary and secondary school career be deleted.

Since the Fifth Circuit Court of Appeals in *Singleton v. Jackson Municipal School District*, 419 F.2d 1211, 1217-18 (5th Cir. 1970), made its ruling with regard to reassignment of faculty applicable to principals and staff who work directly with children, and since this court relied on *Singleton* in ordering reassignment of faculty in DeKalb County, the court is inclined to amend its November 3 order by adding the following to Section 7:

> "* * * A similar ratio shall be accomplished with respect to staff who work directly with children at school. In addition, in no instance shall a principal be assigned to a school based on the racial composition of its students."

Absent a showing that defendants are not progressing "with all deliberate speed" to reassign staff in accordance with this court's order, this court is not inclined to set a deadline for compliance by fall, 1977.

Regarding the M-to-M program, the court did not mean to alter defendants' policy with respect to students changing their residence or entering the school system mid-year. Such students may transfer under M-to-M at the time of their enrollment. The court is mindful, however, of the administrative burdens which will be placed upon the school system if the other requested changes are made in the M-to-M program. The ability of a child to transfer at the end of any quarter and as many times as desired under the Atlanta M-to-M program, *see Calhoun v. Cook*, No. 6298 (N.D. Ga., Feb. 22, 1973), does not persuade this court that such a system is either mandatory or desirable in DeKalb County. Those requested amendments are therefore DENIED.

Plaintiffs' motion to amend is therefore GRANTED to the extent enunciated herein.

So ORDERED, this 23rd day of January, 1977.

/s/ Newell Edenfield
NEWELL EDENFIELD
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

(Caption Omitted in Printing)

ORDER

[Filed Apr. 18, 1977]

This action is once again before the court on defendants' motion to alter or amend this court's order of March 29, 1977 in which the court named members to the bi-racial committee.

Defendants ask this court to delete Oscar Kirk's name from the committee because he is an employee of the defendants. Defendants argue that Kirk is therefore responsible to the defendants at the same time that the defendants are responsible to Kirk as a member of the committee appointed to oversee the actions of the school board. The court agrees with plaintiffs, however, that Kirk's responsibilities as an employee and as a member of the committee are not so intermeshed as to cause the conflicts which defendants fear. Kirk is answerable to defendants only in his professional capacity, and the court is not prepared to rule that he cannot separate his professional loyalties to defendants from his duty to serve as an objective member of the committee.

Defendants also ask that two other members, Mr. Phillip McGregor and Mrs. Eunice Smith, be removed from the commitee because they are plaintiffs in the present action and thus have a pre-determined bias. In support, defendants point to a letter to Dr. Hinson signed by these parties before they were appointed to the committee,

which sets forth various concerns about this case that had been brought to their attention. Defendants argue that this letter "indicates they are not neutral in their thinking and they are not waiting to oversee the Board's action, but instead want to precipitate certain actions."

These individuals may indeed be interested parties, but there is no indication that they are biased. Their letter merely served to transmit complaints that they had received to the school board. It should be noted that their letter addressed to defendant was necessitated by the fact that the members of the bi-racial committee had not yet been named, and that the committee had thus not met. Defendants' motion to remove the above-named individuals from the committee is hereby DENIED.

In its March 29, 1977 order the court ordered the defendants to notify the members so that the committee could begin meeting. Despite the fact that applications are now being made for participation in the M-to-M program, the committee has not yet met. Such applications are due by May 1, 1977. In view of these facts and the presence of various complaints which have already been transmitted to the school board regarding M-to-M, it would appear that the committee has plenty to discuss and should do so promptly, although defendants' counsel would suggest otherwise. Since defendants have resisted gentle prodding by the court to set up a first meeting, the court now ORDERS defendants to schedule a meeting of the bi-racial committee to be held no later than Tuesday, April 26, 1977.

In their response to defendants' motion, plaintiffs asked that the deadline for application to the M-to-M program be extended to July 1, 1977 in view of the fact that the bi-racial committee has not yet convened. The court is not prepared to so extend the deadline at this time and would instead suggest to plaintiffs that their recommendation be addressed to the committee at its first meeting.

If the committee should concur in the recommendation the court will then consider such an extension.

In summary, defendants' motion to alter or amend the March 29, 1977 order is DENIED and defendants are ORDERED to convene a meeting of the bi-racial committee by April 26, 1977.

So ORDERED, this 18th day of April, 1977.

/s/ Newell Edenfield
NEWELL EDENFIELD
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

(Caption Omitted in Printing)

ORDER

[Filed May 6, 1977]

This action is now before the court on the bi-racial committee's recommendation to extend the deadline for application to the M-to-M program from May 1 to May 31. At its first meeting, the committee voted unanimously in favor of the recommendation after first hearing the school board's objections to such an extension.

The committee states that although about 500 applications have been received, there is still much confusion and ignorance regarding the program and suggests that further publicity is needed. Many parents failed to receive the brochures distributed to the students in school, and prospective new students such as those in private kindergartens have not been reached. In addition, the committee notes that many parents have expressed anxiety over whether transportation will in fact be provided. Moreover, the committee feels that it has had inadequate time to oversee the application stage of the program, despite its diligent efforts since its first meeting. The committee feels that the extension would give the committee the opportunity to take the complaints of parents and make meaningful suggestions to the school board.

The commitee states that it carefully considered the school board's reasons for opposing a thirty-day extension, but found them unpersuasive. It reasoned that plans

for allotment of teachers and textbooks and transportation schedules could be roughly sketched based on the pattern of applications up to this point, and did not find that the effect of a thirty-day extension on other administrative matters would be as drastic as defendants described.

The court is inclined to defer to the committee's judgment in this matter since it appears that the committee has carefully and "objectively" considered the situation. The deadline for application to the M-to-M program is hereby EXTENDED through May 31, 1977.

A notes on the issue of transportation is also in order at this time. The M-to-M brochure that was distributed states that the provision for transportation "may be modified based on the number of eligible students who elect to exercise M-to-M transfers and the receiving schools chosen." Defendants are reminded that this court has ordered that transportation be provided; if this provision is to be altered, it will be done only by order of this court. The school board should approach the issue of transportation with the intention of devising a workable plan, as have other systems such as that of Atlanta. Accordingly, defendants are advised to comply with the committee's request that some basic transportation policies and procedures be prepared and submitted to the committee. Knowledge of the exact number of students participating is not necessary for the planning of such basic policies.

Finally, the court wishes to commend the committee for the active and concerned approach to the task for which it was created. The committee has been meeting weekly in an effort to oversee the M-to-M program and approve any school zone changes. It is hoped that this committee can serve as an objective arm of the court, relieving the court of the unwieldy and inappropriate task of becoming embroiled in the daily administration of the school system.

Thus far, the committee is ably fulfilling this role, and accordingly, the court will continue to afford considerable deference to the committee's recommendations.

In summary, the M-to-M application is EXTENDED until May 31, 1977.

So ORDERED, this 6th day of May, 1977.

/s/ Newell Edenfield
NEWELL EDENFIELD
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

(Caption Omitted in Printing)

ORDER

[Filed Oct. 6, 1977]

This continuing school desegregation action came before the court on October 3, 1977 for a hearing on a proposed attendance zone change to relieve overcrowding in Flat Shoals Elementary School. Pursuant to this court's 1969 order, all such zone changes must be approved by the court.

Flat Shoals Elementary School, which had an enrollment of 686 students (79% black) during the 1976-77 school year has a total pupil capacity of 702.[1] At the time of registration for this school term it became apparent that Flat Shoals would be overcrowded, and hence two mobile unit classrooms were placed adjacent to the building, increasing the school's capacity to 754 students. However, by mid-September the school's enrollment had reached 852 (95% black) and it was thus extremely overcrowded.[2] At a meeting of the Flat Shoals Elementary PTA on September 13, 1977, Assistant Superintendent

[1] The school system presently determines elementary school capacity by using a figure of 26 students for each classroom.

[2] No building permits were issued in the Flats Shoals area for either apartments or single family residences. Instead, it is estimated that the large increase was due to the fact that certain formerly "Adult Only" apartment complexes in the area began accepting families with children.

Joe Renfroe explained that the various alternatives available to the school included the addition of several mobile units; alteration of school attendance zone lines; or long-term construction of a permanent addition to the school.

On September 19, 1977, defendant school board approved the administration's proposal to relieve the Flat Shoals overcrowding through alteration of attendance zones affecting Bob Mathis, Columbia, Rainbow, and Flat Shoals elementary schools. On September 23, the plan was submitted to the court-appointed bi-racial committee for its approval pursuant to this court's order of November 3, 1976.[3] The committee approved one segment of the plan affecting Bob Mathis,[4] but, by a divided vote of five to three of those present, declined to approve the balance of the plan, instead proposing its own zone changes. On September 26, the board met with the bi-racial committee, declined to adopt the alternative plan, and the bi-racial committee formally rejected the disputed elements of the board plan.

The School Board's Plan

Under defendants' plan, the eastern boundary line of Flat Shoals would be moved westerly from Shoal Creek to Flat Shoals Road. The area deannexed from the Flat Shoals attendance area contains 131 students, 31 white and 100 black. This would reduce the Flat Shoals enrollment to approximately 721 students, and would change the racial composition from 95% to 97% black. Plaintiffs and the bi-racial committee do not dispute that this is the proper territory to deannex from Flat Shoals de-

[3] All school zone changes must be approved by the bi-racial committee in order to ensure that such changes have the effect of furthering desegregation. *See* Order of November 3, 1976 at 23.

[4] This part of the plan involves the transfer of 32 students (3 white and 24 black) to Bob Mathis, a majority white school. Since there was no opposition to this zone change, the students have already been transferred into the new school.

spite the resultant effect on the racial composition of the school.

While the southern tip of the deannexed territory would be annexed to Bob Mathis,[5] most of the territory would be added to the Columbia attendance zone. The 99 children (23 white, 76 black) involved in this move would increase Columbia's enrollment from 636 to 735, beyond that school's capacity of 676 students. To prevent the overcrowding of Columbia, defendant proposes to shift the southeastern boundary line of Columbia westward, carving out a section from Columbia which would be annexed to the adjacent school zone, Rainbow. Of the 93 students involved in this boundary line change, 46 are black and 47 are white.

As a result of the boundary-line changes, Columbia's student enrollment would increase by six, although its racial composition would increase from 80% to almost 84% black. Rainbow, which currently has an enrollment of 634 with a capacity of 754 students, would have a total of 727 students after the change. Its racial population would increase from 14% to 19% black.

Under the school board plan, the new zones would be contiguous, and many children would be slightly closer to the new school than they were to the previous school. The school plan also allows for further growth in the area which experienced a large increase in student population which led to the overcrowding at Flat Shoals. This area would now be part of Columbia which has a present capacity of 676 students, and which, Renfroe testified, has rooms which could be converted to the equivalent of two or three additional classrooms. In contrast, Rainbow will absorb an area of single-family homes whose student population is not anticipated to grow substantially over the next few years. After the change, Rainbow will be 27 students below capacity, and according to Renfroe, there is little room for expansion in this school.

[5] *See* note 4, *supra*.

The Bi-Racial Committee's Proposal

The bi-racial committee proposes, and the plaintiffs support, a plan under which the 99 students deannexed from Flat Shoals would be zoned directly into Rainbow School, increasing Rainbow's population to 733 students and its racial composition to 22% black. Unless further zone alterations were made, the deannexed portion would be noncontiguous to the balance of the Rainbow zone. Columbia's school zone and its student population would be unaffected by this alternative plan. With this boundary-line change, however the area of apartment complexes, which has experienced the large student increase and where future growth is expected, would be zoned into Rainbow which would have little additional room for further increases in its student population.

The court has no strong conviction as to which of the plans presented is educationally wise or constitutionally mandated. The court can only wish the contrary were true. With a strong conviction either way, the task of the court would be much easier indeed.

At the outset the role of the court is complicated by doubts as to which of the issues and arguments involved raise questions which are purely educational and are therefore addressed to the school board, and which are constitutional and therefore properly addressed to the court. At the center of the disagreement, for example, is the wisdom of involving—unnecessarily, as plaintiffs say—the Columbia school at all. As plaintiffs ask, why not simply transfer the overflow school population from Flat Shoals to Rainbow directly, leaving Columbia undisturbed. They say that Columbia is presently a stable school community and that to arbitrarily transfer ninety-odd students in from one direction and another ninety-

odd out in another, during the school year, is to invite dissension and turmoil. They also correctly point out that a direct transfer from Flat Shoals to Rainbow would serve the constitutional purpose of increasing desegregation at predominantly white Rainbow while not adding to the 80% black majority at Columbia. There was also hearsay testimony from one white parent from the Columbia district suggesting that the double transfer proposed by the board would cause further white flight from the Columbia zone, and would recapture for the public school system certain whites who, as present residents of Columbia, are not now allowed to attend Rainbow school.

As opposed to these arguments, the school board first denies that Columbia is "stable" (whatever that term means), pointing out that in two years because of changing housing patterns it has gone from majority white to 80% black. The board next points out that all of the students involved must be bused in any event and that both in distance and travel time they will be nearer to their new school under the board plan. Admittedly, this is only a make-weight argument, however, since the travel difference between the two plans is only a mile and in time no more than two or three minutes. More important, the board says, its plan adheres to its preference for completely contiguous attendance districts while that of the plaintiffs does not. Admittedly, the DeKalb school system has had some noncontiguous districts in the past but the Superintendent testified they had all been eliminated but one and that the one exception was contiguous but for a strip of the City of Atlanta by which the district was penetrated. Finally, and, it would seem, most important, the board says its plan is calculated to anticipate future increases in school population, thereby making the new attendance zones more permanent, whereas, as it says, more attendance zone changes would be required under plaintiffs' plan within a very few years.

Assessing these opposing arguments, the court concludes that, in the context here, such matters as contiguity of districts, distances to school, stability of school neighborhoods, and anticipation of future school populations are matters which address themselves to administrative or policy questions and are therefore (at least at the present time) the responsibility of the school board, not this court.

Going to the constitutional questions which do concern this court, it sees little to choose between the two plans and nothing to constitutionally mandate one plan over the other. This court has implicitly instructed the school board that any future zone changes should be made "so as to have the effect of furthering as opposed to hindering desegregation." *See* Order of November 3, 1976 at 23. Technically under this order, and if we admit that the function of the court was to merely choose between the two plans, the court would be inclined to favor the plan submitted by plaintiffs over that proposed by the board; and that for one trivial reason: the board's plan would increase the racially black majority at Columbia by approximately 4%, whereas the plaintiffs' plan would not. Otherwise, the difference in the racial impact of the two plans is virtually nil. Both would improve the racial balance at predominantly white Rainbow by approximately equal percentages.

But the court cannot measure every proposed zone change with a micrometer and, furthermore, the court does not consider its function to be a simple choice between the two plans; on the contrary, the only question before the court is whether the plan proposed by a duly elected school board is constitutional. If it is, then the court has no authority to overturn it; and taking into account the entire school plan with its allowance for future growth, the court does not feel that a 4% increase in the black majority at Columbia renders the plan invalid.

The naked fact is that the school population in the entire southern portion of KeDalb County is growing and its racial composition is going black by leaps and bounds. At some future point in time and on a proper presentation, the court may be called upon to deal with this entire development, although it is true that most all of these changes have been brought about by changing residential patterns, not by school board action. At least for the present, however, these larger problems are not before the court. Moreover, from the communications received by the court from this area in either letters from parents, conferences with the bi-racial committee, and indeed from the testimony at this hearing, it appears to the court that, without in any degree surrendering their constitutional rights, the main interest and emphasis of the black residents in this area is not so much for an exact racial balance as for quality education. By their own testimony they are presently getting quality education. By all accounts, the DeKalb school system is said to be the best in the state and perhaps one of the best in the nation. This did not just happen. Much credit for the situation must be given not only to interested and cooperative school parents, but also to an able and effective school board and school administration who, despite some possible shortcomings, are trying to obey the law. Quality educational systems are a fragile blessing, as many metropolitan areas have learned to their sorrow. When one is found it should not be harassed out of existence to satisfy fractional technicalities. To this end courts should defer to school board plans and recommendations unless constitutionally required to do otherwise. Considering all of these factors, the slight increase in the percentage of blacks in Columbia school appears to the court to be, at most, de minimis. This is intended in no way to rebuff the efforts of the bi-racial committee. The committee, however, does not sit as a supervisory school board. In this instance they properly sought a review of their views as well as those of the

board. Recognizing that their argument has some validity, the court still does not feel that the board's proposal is basically unconstitutional or that the committee's plan is constitutionally required.

At this point, the court deems it not amiss to comment briefly on the relationship between the school board and the bi-racial committee and to suggest a few guidelines to clarify the working relationship between the two bodies. The main concern appears to be the bi-racial committee complaints of its inability to get information from the school administration, and the tardy disclosure to the committee of contemplated plans and final proposals.

With regard to proposals and plans, it does not seem necessary for the bi-racial committee to be involved in the early planning stages of administration proposals which may never reach the board for its consideration. On the other hand, it would seem that the bi-racial committee's input would be helpful before proposals, such as zone changes, are submitted to the board for their final approval, and such input should be sought by the school administration. It is of course impossible for this court to mandate a precise point at which time the bi-racial committee must be called upon. However, past experience suggests that the committee must a least be informed of contemplated plans prior to any public hearings or meetings held by the school administration with parents of the children to be affected by such plans.[6]

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[6] In the case of this most recent zone change controversy, Assistant Superintendent Renfroe met with Flat Shoals parents to discuss the overcrowding at that school and the alternatives available to relieve the overcrowding. Admittedly, no plans had yet been drawn, but the committee should have at least been apprised of the problem at Flat Shoals and the possible solutions prior to the meeting so that its members could have been informed participants in this meeting.

With regard to information sought by the committee, it must be remembered that the school system's primary function is to run the schools, and thus it cannot operate at the disposal of the bi-racial committee. Information should not be expected when it has never been compiled by the system, and compilation would be extremely burdensome to the system. However, where statistics have been compiled and are being used by the school system in its preparation of plans, such statistical information should be supplied to the committee as soon as possible.

Once again the committee and school administration are encouraged to work together in the formulation of plans and policies. The school system should seek, rather than avoid, the committee's input. And while the committee is to be commended on its active participation, it is also encouraged to be more understanding of the complex problems which the board and administration face in running the DeKalb schools.

In summary, the school board's proposed zone changes are hereby APPROVED.

IT IS SO ORDERED, this 6th day of October, 1977.

/s/ Newell Edenfield
NEWELL EDENFIELD
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

(Caption Omitted in Printing)

ORDER

[Filed Dec. 27, 1977]

This civil rights action is now before the court on plaintiffs' motion for an award of attorneys' fees, costs and expenses, plaintiffs' motion for a protective order, and defendants' motion to defer consideration of the fee award.

In September, 1975 plaintiffs filed a motion for supplemental relief, claiming that DeKalb County was not in compliance with this court's 1969 order. After hearings held in August, 1976, this court issued its order on November 6, 1976, in which defendants were required to modify their majority-to-minority (M-to-M) transfer program and reassign faculty and staff. The court declined to find that defendants were in violation of the 1969 order with regard to attendance zone changes, and ordered no changes in attendance lines. The court did, however, set up a biracial committee which would oversee future zone changes and school purchase as well as the M-to-M program.

Plaintiffs then moved as the prevailing party for an award of attorneys' fees, costs and expenses pursuant to 20 U.S.C. § 1617 which provides in relevant part:

> Upon the entry of a final order by a court of the United States against a local educational agency, a

> State (or any agency thereof), or the United States (or any agency thereof), for failure to comply with any provision of this chapter or for discrimination on the basis of race, color, or national origin in violation of title VI of the Civil Rights Act of 1964, or the fourteenth amendment to the Constitution of the United States as they pertain to elementary and secondary education, the court, in its discretion, upon a finding that the proceedings were necessary to bring about compliance, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

Plaintiff's lead counsel submitted an affidavit setting out the amount and manner in which time was spent litigating this action between September, 1975 and this year, totaling some 240 hours, and has also submitted a list of expenses totaling some $470.00. Defendants do not contest that some attorneys' fee award is in order, nor that plaintiffs' attorneys actually spent this time and money litigating the action. Instead, defendants suggest that less time *should* have been spent on the case and the fee lowered accordingly.

Both sides point to *Johnson v. Georgia Highway Express*, 488 F.2d 714 (5th Cir. 1974), which sets out a list of criteria for determining an appropriate fee award. Using some of these criteria, defendants propounded a set of interrogatories for plaintiffs' attorneys to answer which would explain such things as the exact way in which the attorneys' time was spent, and the extent of the attorneys' experience in trying such matters. Plaintiffs moved for a protective order, arguing that the interrogatories were intended for purposes of harassment and delay. Defendants rebut this claim and further ask that this court refrain from making an award until the discovery is responded to.

With all deference to defendants' efforts to get additional information before the court on the matter of the

fee, and to plaintiffs' arguments that certain of the interrogatories are indeed burdensome and unnecessary, the court finds that it presently has sufficient information to make a reasonable fee determination, and therefore DENIES defendants' motion to defer.

In explaining the appropriate standards to be used in fixing a fee, the Fifth Circuit Court of Appeals noted in *Johnson* that such a determination cannot be reduced to a calculation with mathematical precision. 488 F.2d at 720. With that caveat in mind, the court proceeds to consider plaintiff's claim for attorneys' fees in light of these criteria.

Obviously the hours claimed by plaintiffs' attorneys is an important factor to be considered. In reviewing the list of hours spent, the court notes that over 100 hours are claimed for telephone calls, client conferences, and community meetings. While the lead counsel's presence was probably necessary for some of these conferences and meetings, a paraprofessional could have handled a substantial portion of this responsibility. 488 F.2d at 717. A paraprofessional could also have been used to some extent to inspect documents, despite the fact that some analysis was necessary in discerning the importance of the various statistics.

It should also be noted that co-counsel has submitted a list of hours, most of which was for research and preparation for hearings, which brings up the question of duplication of effort when two attorneys work on the same problem. Relevant to this consideration is the factor that a good deal of the legal questions presented by the case are neither novel nor particularly thorny. Often, the standards were clearly set forth in Fifth Circuit and Supreme Court opinions. Of course a substantial amount of time was necessarily spent culling the facts of the DeKalb County school situation and applying those facts to current case law. However, the court feels compelled

to reduce the amount of hours claimed in accordance with its own "knowledge, experience, and expertise of the time required to complete similar activities." [1] 488 F.2d at 717.

Reviewing the other factors of *Johnson*, specifically the attorneys' degree of skill and experience, the quality of the work performed, and the results obtained, along with the criteria previously discussed, the court hereby AWARDS attorneys' fees and expenses to plaintiffs in the amount of $12,000.00. Plaintiffs' motion for a protective order and defendants' motion to defer are hereby DENIED as MOOT.

So ORDERED, this 27th day of December, 1977.

/s/ Newell Edenfield
NEWELL EDENFIELD
United States District Judge

[1] The court's reduction of hours has the same effect as lowering the hourly rate.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

(Caption Omitted in Printing)

ORDER

[Filed May 23, 1978]

This school desegregation action came before the court on May 15, 1978 for a hearing on four issues: (1) the closing of Heritage Elementary School, (2) the construction of eight additional classrooms at Flat Shoals Elementary School, (3) the continuing conflict between DeKalb County school officials and the Biracial Committee, and (4) intervenor Johnson's motion to cite defendants with contempt for failing to provide transportation pursuant to the M-to-M program.

1. Heritage is an eighteen-room elementary school, located in the northern section of DeKalb County. It has a capacity of 468 students [1] but for the past few years has had a declining student enrollment. This school year (1977-78) Heritage has a population of 269 students, not including kindergarten and special education students. Projected enrollment for the 1978-79 school year is 247.

The controversy before the court has resulted from defendants' plan to close this school as a regular elementary school and convert it to special education center for elementary-age students residing in the northern part

[1] The school system determines elementary school capacity, absent any special programs, on the basis of twenty-six students per classroom.

of the county. The county currently operates Scottdale Center as a special education high school. This facility is old and unsatisfactory, and defendants plan to transfer the Scottdale program to Margaret Harris Center, which is now serving as a special education center for elementary-age children in the northern portion of the county. Heritage has been chosen as the recipient school for the existing Margaret Harris program.

Plaintiffs and the Biracial Committee [2] oppose the decision to close Heritage, alleging that it will adversely affect a successful majority-to-minority (M-to-M) transfer program currently in operation there.[3] Nineteen students are presently enrolled in that program, and Heritage is the only school in the northern part of the county with substantial M-to-M participation. A spokesperson for the parents of the M-to-M students indicated that she had made an extensive effort to recruit black students, that black parents had visited a number of schools before selecting Heritage, that Heritage was selected primarily for its size and special reading, math and tutoring programs, and that the Heritage community had been receptive to the M-to-M students. She also expressed concern that if Heritage is closed, these M-to-M students will again have to adapt to a new school and that for this reason some might not continue to participate in the program. Plaintiffs and the Biracial Committee assert that other elementary schools in the northern portion of the county, which do not have M-to-M programs, are op-

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[2] Pursuant to the court's November 3, 1976 order, defendants presented the proposed zone changes, which would result from the conversion of Heritage, to the Biracial Committee on April 3, 1978. The Committee rejected the changes stating that Heritage's current use should not be altered.

[3] Plaintiffs and the Biracial Committee oppose only the choice of Heritage as the recipient school for the special education program. They do not oppose, and in fact support, the decision to close the Scottdale Center.

erating significantly below capacity and would be appropriate choices as the recipient school for the special education center. They therefore contend that closing Heritage, which might otherwise be permissible, has an impermissible effect upon the M-to-M program.

Defendants contend that the conversion of Heritage will not have a racial impact. They note that the M-to-M students will be able to attend either Oakgrove or Hawthorne, the schools to which the Heritage students will be transferred, or any other schools they choose under the M-to-M program. They also note that the reading and math facilities are the same at all the elementary schools and that although tutoring services provided by the community may not already exist at Oakgrove or Hawthorne, such assistance is always encouraged.

Defendants also explain that although certain other elementary schools in that portion of the county are severely under capacity, after examination of all factors, Heritage remains the only sensible choice for conversion to a special education facility. Heritage has eighteen classrooms and defendants have determined that approximately that number will be required in the new center. All of the other under-capacity schools which were considered have at least twenty-three rooms. Defendants contend that to convert any of these larger schools would be an uneconomic use of taxpayer money. Defendants also note that some of the other schools which appear to be underutilized actually are housing special programs which require more space per child than the county usually allots. Further, at least two of the schools which are currently under capacity appear to be destined for major changes in enrollment due to their proximity to the MARTA line and expected new housing developments or in the event of a transition from "singles" apartments to family units. Finally, defendants argue that Heritage is in an ideal location for a special education center, which relies upon volunteer services, since it is near other

elementary schools and a high school and is located in the midst of a single-family dwelling residential community.

On the basis of the foregoing testimony, the court concludes that closing Heritage Elementary School to regular students will not have an impermissible effect on the M-to-M program, and, thus, on the process of desegregation of the county school system. The choice of Heritage over other under-capacity schools as the recipient school for the special education center, in the opinion of the court, is justified by its size and location and by the fact that to close any of the other schools would not be economical in terms of room usage or wise in view of possible future increases in student enrollment. Since the M-to-M students now attending Heritage will be able to transfer to Oak Grove or Hawthorne, along with their white classmates, and will have available to them essentially the same learning tools as they had at Heritage, the court concludes that the disruption in the program is not of legal significance. Accordingly, defendants' motion to change attendance zones is hereby GRANTED.

2. Also before the court are plaintiffs' and the Biracial Committee's contentions that the proposed construction of eight additional classrooms at the predominantly black (96%) Flat Shoals Elementary School will violate the court's June 12, 1969 order. That order states, "To the extent consistent with the proper operation of the system, the county board will, in locating and designating new schools, in expanding existing facilities, and in consolidating schools, do so with the objective of eradicating segregation and perpetuating desegregation." Plaintiffs argue that the Flat Shoals expansion is designed to contain the growing population of black students residing in the Flat Shoals district within that school zone and that such containment is contrary to the instructions of this court. Plaintiffs also allege that additional rooms are unnecessary at Flat Shoals inasmuch as three predominantly white schools located nearby have additional space.

Flat Shoals, which is located in the southern portion of DeKalb County, currently has twenty-seven regular classrooms and two mobile unit classrooms. Its enrollment is approximately 710 children, not including those enrolled in the special education and kindergarten programs.[4] Defendants have testified that the eight-room addition, which will be in the form of two pods containing four classrooms each, is not intended to confine black students to a predominantly black school but, rather, is to provide the existing student body with a better environment for learning.[5] Assistant Superintendent Joseph Renfroe testified for defendants as to the intended uses of the additional rooms. Two of the classrooms will replace the two mobile units presently operating at Flat Shoals. Another of the new rooms will be used for the kindergarten program which is being greatly expanded as the result of an increase in state funding. Three of the rooms will be used in connection with the county's special education program, another will be used as a reading and math lab and the final one will serve as a "multi-purpose" room. Defendants also note that the rooms will be fully air-conditioned and will have modern equipment and furnishings.

While the court recognizes the concerns expressed by plaintiffs and the Biracial Committee on this matter, it

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[4] Defendants were before this court in September, 1977, as a result of a drastic and unexpected increase in the student enrollment of Flat Shoals which created severe overcrowding at that facility. At that time the court approved the installation of two portable classrooms and a change of attendance zones which zoned approximately 130 students out of the Flat Shoals district.

[5] Defendants also make much of the fact that these eight classrooms will not be used to bring any new students into Flat Shoals who do not now reside in that school zone. Clearly the court would not permit such a change.

cannot conclude, on this set of facts, that defendants' plan to construct these additional classrooms at Flat Shoals violates the June 12, 1969 order. However, to insure that this expansion never serves to contain the black student population in the Flat Shoals school, the court DIRECTS that the additional rooms be used *only* for those purposes that were stated to the court. Since the court is aware of the difficulties in determining at this point the precise number of special education classrooms which will be needed at Flat Shoals, it will allow defendants a certain amount of leeway in the allocation of the use of rooms as between special education classes and special learning laboratories. In no instance, however, are any of the new rooms to be used to house, or to permit the housing of, additional sections of any grade level.[6] The court will not condone additions to Flat Shoals which are designed, or will serve, to keep the growing black school population within the existing attendence zones. In the event the Flat Shoals enrollment continues to climb, and all indications are that it will, the court recommends that defendants seriously consider alternatives to further construction, such as alterations in attendance zones, and, possibly, some form of busing, in order to remedy the overcrowding which is bound to occur and to promote desegregation in the county schools. In considering additions to other predominantly black schools in the county, defendants are advised to keep this admonition in mind.

3. The next issue to be addressed is the Biracial Committee's request that the court establish certain guidelines delineating the authority of the Committee. Elaine Davis, testifying on behalf of the Committee, cited as points of contention between the parties the fact that defendants have failed to request the Committee's approval of their

[6] The three rooms being built to replace the mobile units and to house the kindergarten classes are, of course, excepted from this restriction.

actions, failed to follow its (the Committee's) recommendations, and continued to refuse to provide it with pertinent information.

As the court explained at the hearing on this matter, the Biracial Committee has no authority to order defendants to take or to forbid them from pursuing any specific course of action. Further, the court has no power to grant the Committee such authority. On the other hand, the Biracial Committee has *complete* authority to inquire into all matters involving the DeKalb County school system in which there are racial overtones. The Committee should investigate any problems it pinpoints, make recommendations to defendants, and seek relief in the court if it is not satisfied with defendants' response. The court INSTRUCTS defendants to furnish the Committee with whatever information it requests in connection with matters having racial overtones,[7] and, to the extent that defendants assert that the order creating the Biracial Committee gave it authority to oversee only certain race-related matters, defendants are to consider that order modified. Finally, the parties are cautioned that the court does not want to be plagued with this problem any further.

4. The final issue before the court is intervenor's motion to cite defendants with contempt for their failure to provide transportation for her child pursuant to the M-to-M program. On November 3, 1976, this court entered an order which provided:

> (1) The M-to-M program [is to] be modified so that any student may transfer from a school where his race is in the majority to any other school within the county in which his race is in the minority. Space must be made available in the receiving schools

[7] Defendants are advised that the court will frown upon standard refusals to provide information on the ground that the question has no racial overtones.

> for transferees who shall be given priority for space over other new students . . . . (5) Transportation shall be provided at the expense of the school system to any M-to-M student who so requests and who lives more than one mile from the receiving school. (6) These changes in the M-to-M program shall be implemented for transfers beginning in the 1977-78 school term. Students wishing to participate in the program for the remainder of the '76-77 school term, may transfer to a school which qualifies under the provisions of this order and in which there is space available. Transferees must provide their own transportation for the balance of the 1976-77 school term.

Intervenor is a white resident and citizen of DeKalb County and the parent of a minor child presently enrolled as an M-to-M student at Meadowview Elementary School, a predominantly black school in the county school system. Because she lives more than one mile from Meadowview, intervenor has requested that defendants provide her child with transportation to school in accordance with the court's order.

Defendants refuse to provide such transportation, however, and contend that the issue before the court does not relate to their refusal to provide transportation under the M-to-M program but "to the question of whether Intervenor can use the M-to-M program as a guise for obtaining transportation not otherwise available . . . under the special education program of the DeKalb County School System." Defendants assert that the child in question is a student in the General Learning Disability-Educable Program ("GLD-E") operated by DeKalb County, that she was enrolled in the GLD-E class at Flat Shoals Elementary School, and that when that class was transferred to Meadowview, she chose to remain with it, although transportation to Meadowview was not available for her under the special education program. After intervenor submitted applications to defendants for transportation

to Meadowview under the special education and M-to-M programs, defendants advised her that transportation was not available to Meadowview but offered to transport the child to any of three other schools in the system. Two of these schools were predominantly black, which was one of the main reasons advanced by intervenor for enrolling her child at Meadowview under the M-to-M program. Intervenor has rejected this offer and continues to enroll her child in the Meadowview program. Defendants, therefore, argue that they have not violated the court's November 3, 1976 order regarding mandatory transportation for M-to-M students.

The court disagrees. The language of the order is quite clear—"Transportation shall be provided at the expense of the school system to any M-to-M student who so requests and who lives more than one mile from the receiving school." Intervenor's child is an M-to-M student, enrolled at predominantly black Meadowview. She lives more than one mile from the school and she has requested that defendants provide her with transportation. Although this child may not have been one of the intended beneficiaries of that provision, she is clearly within the letter of the law, and, until such time as the order is modified,[8] defendants must comply with its terms. In view of the particular facts before it, however, the court DIRECTS only that defendants compensate intervenor for the costs of her child's transportation after May 15, 1978. Intervenor's requests, presented at the hearing on this subject, for compensation for her past transportation charges and for actual transportation for her child are

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[8] The court's November 3, 1976 order provided: "Defendants may seek modification of [the provision requiring that they provide transportation] if, based on the number of students electing to exercise M-to-M transfers and the receiving schools chosen, a workable plan of transportation proves impossible." Defendants have not sought any modification of the transportation provision, however, and the court declines to alter or amend that order on its own motion.

DENIED at this time. The court INSTRUCTS the parties to discuss this situation further to see if some agreement can be reached and to return to the court with this problem only if they are unable to resolve it after *reasonable* negotiations.

In sum, plaintiff's motion to supplemental relief is DENIED, and defendant's motion to allow a change of attendance zones is GRANTED. Intervenor's motion to hold defendants in contempt is DENIED, but defendants are DIRECTED to compensate intervenor for the costs of transporting her child to Meadowview after May 15, 1978.

So ORDERED, this 23rd day of May, 1978.

/s/ Newell Edenfield
NEWELL EDENFIELD
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

(Caption Omitted in Printing)

ORDER

[Filed Sep. 6, 1978]

This school desegregation case is now before the court on plaintiffs' motion to amend the court's order of May 23, 1978 and defendants' motion to alter or amend the court's order of November 3, 1976.

1. By order of May 23, 1978, the court permitted defendants to build an eight-room addition to predominantly black (96%) Flat Shoals Elementary School. Plaintiffs had contended that such construction would violate the court's June 12, 1969 order, which states, "To the extent consistent with the proper operation of the system, the county board will, in locating and designating new schools, in expanding existing facilities, and in consolidating schools, do so with the objective of eradicating segregation and perpetuating desegregation." Specifically, plaintiffs argued that the Flat Shoals expansion is designed to contain the growing population of black students residing in the Flat Shoals district within that school zone and that such containment is constitutionally impermissible. At a hearing on this matter, Assistant Superintendent Joseph Renfroe testified on defendants' behalf as to the intended uses of the eight rooms. As noted in the court's May order, two of the classrooms will replace two mobile units presently operating at Flat Shoals and another of the rooms is needed for the expanded kindergarten program. Three of the rooms will

be used in connection with the county's special education program, another as a reading and math lab, and the final one as a "multi-purpose" room. On these facts the court concluded that the construction of these additional rooms would not serve to contain the black student population in Flat Shoals school.

Plaintiffs, in their motion to amend, now request that the court order a desegregation plan implemented at Flat Shoals. They contend that by permitting rooms to be added which would house kindergarten and special education students, the court has somehow improperly distinguished between "regular" students and kindgergarten and special education students in its approach towards containment. The court finds this position to be without merit. In approving the construction it has not distinguished between classes of students but has merely held that the addition of *new* rooms for *new* programs in the Flat Shoals situation is not violative of existing court directives or the Constitution.

Plaintiffs also argue that the judgment should be amended because the additional rooms "will open up space previously committed so more regular students may be housed in a racially segregated setting." This assertion ie patently incorrect. In its May 23, 1978 decision, in order to guarantee that containment of the black student population never occurs as a result of these additional eight rooms, the court placed defendants on notice that the new classrooms were to be used only for the purposes stated to the court. Further, it stated:

> In no instance . . . are any of the new rooms to be used to house, or to permit the housing of, additional sections of any grade level. The court will not condone additions to Flat Shoals which are designed, or will serve, to keep the growing black school population within the existing attendance zones. In the event the Flat Shoals enrollment continues to climb, and all indications are that it will, the court recommends that defendants seriously consider alternatives to further construction, such as alterations in attendance zones, and, possibly, some form of busing, in order to remedy the overcrowding which is bound to occur and to promote desegregation in the county schools.

Order of May 23, 1976, at 6. It appears to the court, therefore, that should defendants deviate from the stated uses of the rooms in issue, plaintiffs' remedy will be a motion for contempt. The court declines to anticipate the need for such a motion at this time.

2. Also before the court is defendants' request that the court amend its order of November 3, 1976 to exclude the kindergarten and special education programs of the school system from the operation of the Majority-to-Minority (M-to-M) Transfer Program. Defendants contend that because of the special nature of these programs such an exclusion is appropriate. As to the participation of kindergarten students in the M-to-M program, defendants' primary concern seems to be the cost and operation of a transportation system for such students. The kindergarten program will be run on a split session basis with the first session from 8:30 A.M. to 11:30 A.M. and the second session from noon until 3:00 P.M. Defendants assert that they will be required to hire an additional set of buses to accommodate the midday transportation for M-to-M students and that the expense of these buses justifies the exclusion of kindergarten students from M-to-M participation. Plaintiffs argue, on the basis of cases involving desegregation plans, that current case law mandates the inclusion of kindergarten students regardless of possible increases in transportation costs.

Having considered the positions of both sides on this question, the court concludes that kindergarten students, for this and all subsequent school years, must be permitted to participate in the M-to-M program. *See Flax*

v. Potts, 464 F.2d 865 (5th Cir. 1972). However, because of "the tender age and special age of [the kindergarten] students," *Flax, supra*, at 869, the court declines to order defendants to bus these children. The court's order of November 26, 1976 is therefore modified to state that while the M-to-M program must be extended to the pre-school level, the parents of kindergarten students enrolled in M-to-M must arrange for the transportation of their children to the recipient facility. Further, since there seems to have been some confusion surrounding this matter at registration, defendants are DIRECTED to notify the parents of all kindergarten students, in writing, that they may still enroll their children in the M-to-M program this year if they so desire. Defendants are to transfer immediately any students who wish to participate in this program.

Defendants have also asked the court to modify its November, 1976 order to exclude special education students from the M-to-M program. As grounds for this request, defendants note that pursuant to the Rehabilitation Act of 1973, 29 U.S.C. §§ 701, *et seq.*, and the Education for All Handicapped Children Act of 1975, 20 U.S.C. §§ 1401, *et seq.*, they are required to adopt a system-wide plan designed to provide each handicapped child within their jurisdiction with full educational opportunities. In conjunction with this plan, plaintiffs must prepare an individualized education program for each handicapped child. This program is the collaborative effort of parents and professionals and is based upon a battery of tests and medical examinations and will be used to place the handicapped child in the least restrictive environment, as required by law. Defendants contend that permitting special education students to enroll in the M-to-M program will create a conflict between the placement procedures of the special education program and the operation of the M-to-M program and, therefore, seek their exclusion from M-to-M participation. Plaintiffs assert that defendants are merely attempting to stall desegregation of the county's school system still further by limiting the numbers of students eligible for this transfer program.

This controversy appears at this point to be a battle in the clouds. Only one special education student sought to enroll in the M-to-M program during the last school year and none have attempted to do so this year. Until such time as the number of special education students enrolled in the M-to-M program increases dramatically, therefore, the court refuses to consider defendants' position. Accordingly, special education students will not be excluded from participation in the M-to-M program. Since much effort has already been expended on the formulation of an individualized education plan for each student enrolled in the special education program, however, any student whose parents have already executed a consent form relating to his placement for *this* school year will not be allowed to participate in the M-to-M program this year. Conversely, any special education student whose parents have not already signed a consent form regarding the special program will still be able to enroll as an M-to-M student should his parents so desire. Defendants are DIRECTED to advise all parents of special education students in writing of this option under the M-to-M program within the next ten (10) days, even though some of the students will not be eligible to participate in the M-to-M program until the next school year.

In sum, plaiantiffs' motion to amend the court's order of May 23, 1978 is DENIED, and defendants' motion to alter or amend the court's order of November 3, 1976 is GRANTED in part and DENIED in part.

So ORDERED, this 6th day of September, 1978.

/s/ Newell Edenfield
NEWELL EDENFIELD
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

(Caption Omitted in Printing)

ORDER

[Filed Oct. 26, 1978]

This school desegregation case is now before the court on plaintiffs' motion to alter or amend the court's order of September 6, 1978. Among other things, that order determined that while kindergarten students must be permitted to participate in the majority-to-minority (M-to-M) transfer program, the parents of such students and not the school board "must arrange for the transportation of their children to the recipient facility." Order of September 6, 1978, at 4. This decision was based largely on the court's concern that busing such young students, especially when they would be transported along with high school students, might cause them harm.

Plaintiffs now request that the court alter its order to require that the school board provide transportation to kindergarten M-to-M students. Having carefully read and considered both briefs, however, the court will adhere to its earlier decision. Accordingly, plaintiffs' motion to alter or amend is DENIED.

So ORDERED, this 25th day of October, 1978.

/s/ Newell Edenfield
NEWELL EDENFIELD
United States District Judge

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 78-3603
Summary Calendar*

WILLIE EUGENE PITTS, *et al.*,
Plaintiffs-Appellants,

v.

JIM CHERRY, *et al.*,
Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

July 16, 1979

Before GOLDBERG, RONEY and TJOFLAT, Circuit Judges.

PER CURIAM:

In this class action lawsuit parents of black school children challenge that portion of the district court's desegregation plan which does not require the DeKalb County school system to provide transportation for kindergarten children who elect to participate in the voluntary

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* Rule 18, 5 Cir., see *Isbell Enterprises, Inc. v. Citizens Casualty Co. of New York, et al.*, 5 Cir. 1970, 431 F.2d 409, Part I.

majority-to-minority transfer program. We have uniformly held that kindergarten children need not be included in desegregation plans and have further ruled that parents must arrange for transportation of kindergarten children who choose to participate in a majority-to-minority transfer program. *Flax v. Potts*, 464 F.2d 865, 869 (5th Cir. 1972) *see Lockett v. Board of Ed. of Muscogee Co. Sch. Dist., Ga.*, 447 F.2d 472, 473 (5th Cir. 1971); *Arvizu v. Waco Independent School District*, 495 F.2d 499, 503 n.8, 504 n.9 (5th Cir. 1974). We affirm.

DeKalb County operates a majority-to-minority (M-to-M) transfer program in which any student attending a school in which he or she is of the majority race may transfer to a school in which he or she would be of the minority race. Participation in the program by students is voluntary. About 1,229 students or 6% of the black student enrollment has opted to participate. Federal court order required defendants to provide transportation for all M-to-M students.

In May 1978, the school officials asked the district court to exclude entirely all kindergarten children from the M-to-M operation. At that time defendants were not operating a fully funded kindergarten program. About 1,750 students participated in the kindergarten program, most of whom were educationally deprived or handicapped children. Of that number, about 150 or 42% lived more than a mile from the school to which they were assigned and were provided transportation to and from the half-day program. Defendants were in the process of expanding the kindergarten program by fully funding it and anticipated an increase to about 4,000 students with slightly less than 50% of that number being transported. Their predictions proved fairly accurate.

At present DeKalb County operates a state funded kindergarten program and uses state funds for operational costs, including transportation. The school system

currently transports just under 2,000 kindergarten children who live a mile or more from their school. Only M-to-M kindergarten children are not provided transportation.

Although the district court denied defendants' request to exclude kindergarten students from participating in the M-to-M program, the court declined to require the defendants to furnish transportation for those electing to participate, citing as its reason the tender age of the kindergarten students, Relying on *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 26-27, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971), and its progeny plaintiffs argue that prior decisions require that the transportation burden be placed on the school system, the right to transportation attaches regardles of age or grade, the right to transfer M-to-M is ineffective if transportation is not provided, and denial of transportation is constitutionally impermissible where a school system provides transportation to all other kindergarten children.

Addressing the issue of transportation for majority-to-minority transfer kindergarten students in *Flax v. Potts*, *supra* at 869, Judge Dyer said:

> Another prong of appellants' objection to the Comprehensive Plan approved by the trial court is the non-inclusion of kindergarten and first grade students in the cluster program. We find no justification for the non-inclusion of first grade students. They are part of the normal curriculum of the district and entitled to a full and equal integrated education. We believe, however, that because of the peculiarities of the kindergarten program, the limited nature of its operation, and the tender age and special needs of its students, its elimination from the over-all student assignment plan is neither unreasonable nor constitutionally impermissible. See *Lockett v. Board of Education of Muscogee County*, 5 Cir. 1971, 447 F.2d

> 472 [1971]. The kindergarten pupils will therefore continue to attend the elementary school nearest their home conducting a pre-school program. However, for the parents of those children who so elect, the majority-to-minority transfer provision of the Comprehensive Plan must be extended to the pre-school level to make the pre-school program in any elementary school in the district available, provided the parent can arrange for the transportation of his child to that facility.

While this Court required transportation be provided for M-to-M students in *Tasby v. Estes*, 572 F.2d 1010, 1015 (5th Cir.), *cert. granted*, —— U.S. ——, 99 S.Ct. 1212, 59 L.Ed.2d 454 (1978), we there permitted children in kindergarten programs to remain in neighborhood schools. *Id.* at 1014. Hence the issue of transportation for kindergarten M-to-M students was not reached. The other cases relied on by plaintiffs do not concern kindergarten children and do not control the instant case. *See, e.g., Swann v. Charlotte-Mecklenberg, supra* 402 U.S. at 30-31, 91 S.Ct. 1267; *United States v. Texas Education Agency*, 579 F.2d 910 (5th Cir. 1978); *Cisneros v. Corpus Christi Independent School District*, 467 F.2d 142 (5th Cir. 1972); *Brewer v. School Board of the City of Norfolk, Va.*, 434 F.2d 408 (4th Cir. 1972); *Clark v. Board of Education of Little Rock School District*, 426 F.2d 1035 (8th Cir. 1970).

Plaintiffs argue that the denial of transportation to M-to-M kindergarten students while providing transportation to non-M-to-M kindergarten students is unconstitutionally impermissible. We cannot reach this question on this record. In this case no indication is given regarding the racial composition of the non-M-to-M kindergarten students who are being transported. We cannot determine, therefore, the extent to which there is an exclusion of black children and inclusion of white children in the transportation of kindergarten children.

The district court could have legally excluded the kindergarten students from the M-to-M program. Refusing to do so but requiring parents to arrange transportation for kindergarten M-to-M students does not appear to abuse the discretion of the district court to fashion a desegregation plan for the constitutional fault which brought the case before the district court in the first place, taking into consideration all relevant factors, such as cost to to system and the tender age of kindergarten children.

Plaintiffs have not met their burden on appeal of demonstrating that the district court erred in this case.

AFFIRMED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action No. 11946

WILLIE EUGENE PITTS, *et al.*

vs.

JIM CHERRY, *et al.*

ORDER

[Filed May 8, 1979]

This school desegregation case is now before the court on defendants' motion to alter or amend the court's order of November 3, 1976 to modify the majority-to-minority transfer program (M-to-M) in the DeKalb County School System in certain respects. Prior to November 3, 1976, the school system operated an M-to-M program which permitted a student attending a neighborhood school in which his race was in the majority to transfer to a school where his race was in the minority provided that the receiving school had the capacity to hold an additional student and that the minority race comprised no more than 40% of the student population. The student could only transfer to the "next closest school" meeting these criteria, however, and the County provided no transportation for students who exercised the M-to-M option.

In its November, 1976 order, the court modified this program by requiring that the school system provide M-to-M students with transportation and by eliminating the "next closest school" requirement. The court also

struck the 40% limitation and ordered that "the M-to-M program be modified so that any student may transfer from a school where his race is in the majority to any other school within the country in which his race is in the minority." In addition, the order provided that:

> (3) The school system shall publicize the M-to-M transfer procedure by paid advertisements in local newspapers; news releases to all media; brochures available at each school; and notices placed in school newsletters and newspapers no later than March 15 of each year. Such publicity shall be followed by notices sent to each parent or guardian no later than March 31 of each year.
>
> (4) Any student may exercise a majority-to-minority transfer once during the student's elementary career and once during the secondary school career. Once a transfer is effected, the transferee need not reapply for the transfer each year. If the student's race becomes a majority in the receiving school, he may (a) remain at the receiving school; (b) return to his neighborhood school; or (c) transfer to another school in which his race does not comprise more than majority of the studenty body.

On January 9, 1979, the Bi-Racial Committee, which was created by the court's November, 1976 order to oversee the operation of the M-to-M program, met, discussed and passed a motion recommending that the M-to-M program be modified as follows:

> (1) When a school's student population exceeds 26% black or the system-wide black percentage, whichever is greater, that school shall not be eligible to receive any additional M-to-M transfers.
>
> (2) When a school becomes ineligible to receive M-to-M transfers as discussed above, any existing M-to-M students enrolled in that school may exercise

an option to transfer to any other eligible school or to their neighborhood school.

(3) In determining whether a high school will be eligible to receive M-to-M students for the forthcoming school year, the racial makeup of the seventh grades of the feeder schools to that high school shall be used to project the racial makeup for the next school year.

(4) In order to achieve maximum utilization of the M-to-M program, the school administration will enthusiastically encourage participation by publishing a brochure detailing the assets of the program, and eligible schools, and fully promote the M-to-M program through the news media.

(5) All other aspects of the M-to-M program not in conflict herewith shall be left intact.

This motion was then presented to the DeKalb County Board of Education, and on January 15, 1979, the Board passed a resolution stating that it concurred with the Committee's recommendations regarding modification of the M-to-M program and directing its attorneys to seek this court's approval of these proposed changes. Thereafter, the instant motion requesting that the court amend its November order to incorporate the modification suggested by the Committee and approved by the Board was filed.

Plaintiffs have opposed the motion to amend, focusing primarily upon the request that the M-to-M program be modified so that black students participating in that program may only transfer to schools that are less than 26% (or the system-wide black student enrollment percentage) black. First, they contend that before issuing its November, 1976 order the court considered and rejected a similar proposal using a 15% figure and that the doctrine of res judicata bars relitigation of the matter now. They also argue that any limitation on a

student's right to transfer pursuant to the M-to-M program is constitutionally impermissible. Finally, while recognizing that the Bi-Racial Committee has suggested the 26% limitation in an effort to stem white flight in the southern portion of the country and thus promote integration in the county's school, plaintiffs assert that the proposed change in the program will not accomplish this goal.

A hearing on this matter was held on April 5, 1979. Defendants, as movants, called as a witness Ms. Elaine Davis, Chairperson of the Bi-Racial Committee. Ms. Davis testified that sometime in May, 1978, noting that most of the M-to-M students attended schools in the southern part of the country, the Committee became concerned about the relationship of the M-to-M program to the racial transition occurring these schools. As a result, Ms. Davis gathered statistics on the racial makeup of certain schools and on M-to-M enrollments over a period of years and presented this information to the Committee by means of charts and graphs. After studying this material, she and the Committee concluded that while the M-to-M program was not the cause of white flight in the southern section of the county, it was, because of the way it was being used by DeKalb parents, a negative factor in causing schools already in the path of natural integration as a result of housing patterns to "tip" and become predominantly black schools. Recognizing that the precise effect of the M-to-M program differs from school to school, the Committee concluded that if the M-to-M program were available only at those schools which are less than 26% (or the system-wide black student enrollment percentage) black, the program might become a positive factor in stemming white flight from transitional schools and neighborhoods. The Committee reasoned that with such a limitation, schools which were destined to "tip" might stabilize because M-to-M students who would have enrolled in those schools, would,

under the modified program, have to attend schools in the central or northern, majority-white sections of the county or stay in their already predominantly black neighborhood schools.

At the hearing, defendants introduced into evidence student enrollment figures, reflecting racial distribution and M-to-M participation, for both elementary and high schools. They also presented graphs comparing the increasing black student population and declining white enrollment over the past few years at certain schools which are presently in transition or which have recently become majority-black institutions. Where appropriate—Avondale, Cedar Grove, and Southwest DeKalb High Schools, and Bob Mathis and Rainbow Elementary Schools—the charts include an additional line reflecting what the black student enrollment would have been absent any M-to-M students; this latter line suggests that, at least in these five instances, the school would not have or will not become a majority-black school as quickly without the M-to-M students as it has or will given their presence. Finally, on the basis of present enrollment figures, defendants state that the following schools will be affected by the proposed change in the M-to-M program—Avondale, Cedar Grove, and Southwest DeKalb High Schools and Avondale, Canby Lane, Chapel Hill, Forrest Hills, Bob Mathis, Peachcrest and Rainbow Elementary Schools.

In opposition to the Committee's proposal, plaintiffs offered the testimony of a parent of an M-to-M student, Mr. Fred Gray. He stated that he feels the proposed 26% limitation would create a dilemma for black parents and students because students participating in the modified program would have to travel farther from home in order to attend an eligible school and because such a school would probably be overwhelmingly white and therefore would offer a less confortable social atmosphere for the child. As a result of these considerations, he felt that fewer black parents would enroll their children in

this program. Mr. Phillip MacGregor, Chairman-elect of the Bi-Racial Committee, also appeared for plaintiffs. He testified that while he had originally favored the Committee's suggested modifications, he has reconsidered his position and now believes that the M-to-M program has little effect on the racial transition presently occurring in the schools and that changing neighborhoods are the cause of the transition. Mr. MacGregor, for the same reasons stated by Mr. Gray, expressed concern that the proposed limitation would actually retard the M-to-M program and serve to confine black students to their majority-black neighborhood schools. Finally, plaintiffs introduced into evidence statistics revealing the racial transition in the county's schools from 1968 through the present and maps of the county which have been color-coded to reflect the white, black-resident, and M-to-M student populations of each elementary and high school.

The court is well aware that there is strong authority declaring that limitations of any sort on an M-to-M program are impermissible. In *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), the Supreme Court recognized that "[i]n order to be effective, [an M-to-M program] must grant the transferring student free transportation and space must be made available in the school to which he desires to move." *Id.* at 26-27. On the basis of *Swann*, the Fifth Circuit stated, in *United States v. Texas Education Agency*, 467 F.2d 848, 886 (5th Cir. 1972), and *Cisneros v. Corpus Christi Independent School District*, 467 F.2d 142, 153 (5th Cir. 1972):

> An overall amelioration of any possible discrimination will tend to be accomplished by the use of the mandatory majority-to-majority transfer provision of *Swann*. . . . Such a provision will guarantee both races an unfettered right to attend schools with members of an opposite race or identifiable ethnic group, and with transportation provided.

Moreover, the Fourth Circuit has rejected a limitation similar to the one at issue here. In *Brewer v. School Board of Norfolk*, 434 F.2d 408, 412 (4th Cir. 1970), the court held:

> The limitation that would allow black pupils to transfer only to a school which has less than 30% of their race must be removed because it unduly restricts the schools to which these pupils can transfer [under the M-to-M program].

These cases make clear that the choice of a school under an M-to-M program lies with the student, not the school system; thus, a limitation of the type proposed by defendants and the Committee, which would interfere with a student's choice, would appear to be invalid as this court recognized in its November, 1976 order.[1] Nevertheless, if, as the Committee and defendants contend, the existing M-to-M program is being used in such a fashion that it is fostering segregation rather than promoting integration in the county's schools, and if it appears that

[1] There, the court considered defendants' proposal that the M-to-M program be available only in schools where the minority race comprises no more than 15% of the student body. It stated:

> Defendants contend that this will accommodate the preferences of many of the named movant-plaintiffs to transfer to the more predominantly white schools. However, this same limitation will inhibit students who desire to attend a school where their race is in the minority, but which is also close to their homes.
>
> The purpose of the current 40% requirement, and presumably the proposed 15% figure, is actually to prevent those schools from "tipping", or rapidly becoming predominantly black schools. Defendants have cited no authority, nor can this court find any support, for the use of such limitations in an M-to-M program to retard any change in the racial composition of a school in this manner. In fact, the implication from *Swann* is that very few restrictions should be imposed upon a student desiring to participate in an M-to-M transfer: "In order to be effective . . . space must be made available in the school to *which he desires to move*." 402 U.S. 26-27 (emphasis added). . . .

a limitation of the type presented here would relieve this situation, the court would not hesitate to refuse to follow these precedents.

With this in mind, the court has carefully reviewed the maps, charts, and graphs submitted by both sides. On the basis of the data presented, it cannot conclude that there is a significant tie between the M-to-M program as it presently exists and the rapid racial transition occurring in certain of the county's schools. As discussed more fully below, such transistion appears instead to have resulted from changes in neighborhoods where blacks are moving in and whites are moving out.

A comparison of statistics demonstrating the racial transition in schools prior to the implementation of a viable M-to-M program and after the introduction of such a program reveals that white flight in the presence of M-to-M is no greater than it had been before for schools in the natural path of integration. Prior to the 1977-78 school year, the first year in which a substantial number of students participated in the transfer program, white flight, coupled with the movement of blacks into new neighborhoods, had operated to transform at least seven predominantly white elementary schools into substantially all-black institutions. For example, as shown in plaintiffs' exhibit 8, Leslie Steele Elementary, which was 17% black in 1969, became 50% black in the next year, and 85% black by 1971. In the three school years between 1971 and 1973, Gresham Park went from 11% to 23% to 63% black, and Flat Shoals Elementary, only 4% black in 1972, had increased to 32% black in 1973, 54% in 1974 and 68% in 1975.

The following enrollment figures[2] from schools which participated in the M-to-M program and are presently

[2] These figures are drawn primarily from plaintiffs' exhibit 8 and defendants' exhibit 7. Where discrepancies occur, the court has used the figure which would be most favorable to the movant in this matter.

more than 26% black show that this pattern of white flight has continued but do not suggest that the presence of M-to-M students has hurried the transition.

School	1976 %B	1977 %B	1978 %B	January 1979 Total Enrollment	M-to-M (%)
Avondale	35	38	41	657	3 (.5%)
Canby Lane	8	20	47	684	18 (3 %)
Cedar Grove	21	33	55	754	73 (10 %)
Chapel Hill	13	22	42	732	3 (.4%)
Forest Hills	31	32	34	311	7 (2 %)
Bob Mathis	5	26	46	566	53 (10 %)
Peachcrest	26	31	42	502	8 (1 %)
Rainbow	5	15	40	756	53 (7 %)
Snapfinger	45	65	79	845	33 (4 %)

At Chapel Hill Elementary, where only three M-to-M students were enrolled, the back student population increased from 13% to 22% to 42% over a three school-year period. Canby Lane Elementary underwent similar transition, from 8% to 28% to 47% black, over the same span of time but it is difficult to see how, in a school of 684 students, the enrollment of eighteen (3%) M-to-M students encouraged any white migration. Forest Hills, on the other hand, with a 2% M-to-M population, saw very little (3%) racial transition between 1976 and 1978, thus suggesting that M-to-M has little or nothing to do with changing housing patterns. Nor is the racial transition in those elementary schools with the largest percentage of M-to-M students—Cedar Grove (10%) and Bob Mathis (10%)—out of keeping with the pre-M-to-M "white flight" statistics discussed earlier, given these schools' location in the natural path of integration in the county. Finally, as support for its conclusion that the transition occurring in these schools is caused by the changing complexion of the neighborhoods rather than the M-to-M program in any significant way, the court looks to the effect of the M-to-M program on

Fernbank Elementary School. Fernbank, which has had an increasing M-to-M enrollment since 1974, is located in a stable, predominantly white community which appears to be undergoing little or no racial transition. With a total student enrollment of 680, Fernbank has 142 black students (20.9%), 139 of whom are enrolled under the M-to-M program; it appears to have suffered little, if any, white flight as a result of these students, however.

An examination of the racial transition in the high schools both before and after the M-to-M program became viable also indicates that the M-to-M program played little role in bringing about such change. The transition occurring in Avondale, Cedar Grove and Southwest DeKalb High, all of which enroll M-to-M students, is consistent with that which took place at both Columbia and Walker High without the M-to-M program.

In addition to finding that the existing M-to-M program has not, by its usage, encouraged white flight and thus promoted resegregation of the schools, the court concludes that the implementation of the proposed limitation on the M-to-M program will not accomplish the intended goal of stabilizing the schools and preventing the erosion of their white populations. As noted earlier, defendants claim that the following schools will be affected by the change—Avondale, Canby Lane, Chapel Hill, Forest Hills, Bob Mathis, Peachrest, Rainbow, and Stoneview Elementary Schools and Avondale, Cedar Grove and Southwest DeKalb High Schools. Further testimony revealed, however, that Cedar Grove and Avondale High Schools and Bob Mathis Elementary have become majority black and therefore can no longer accept M-to-M students under any conditions. Moreover, Southwest DeKalb High School is so severely overcrowded that it can accept no new students at all. All of the remaining schools, with the exception of Rainbow Elementary, have less than a 3% M-to-M population, and it is unreasonable to assume that by precluding any additional transfers, the racial transition in

these schools would cease. Rainbow, with a 7% M-to-M enrollment, might undergo a slower transition if the proposed change were adopted but such relief is completely speculative.

Thus, considering the absence of a significant link between the present M-to-M program and the problem of white flight in certain of the county's schools and the dearth of facts indicating that the 26% restriction would have a positive effect upon these schools, the court concludes that this proposed change in the M-to-M transfer program should not be adopted. Without proof that the existing program is somehow obstructing or undercutting the integration effort, especially in light of the very persuasive testimony of two witnesses that they believe such a modification would inhibit participation in the M-to-M program and therefore essentially confine black children to their predominantly black neighborhood schools, the court can find no basis for ignoring the legal precedents discussed earlier in this order. Defendants' request that this 26% limitation be made a part of the M-to-M program is therefore DENIED.

The court must next consider defendants' recommendation that the November, 1976 order be altered to provide that "when a school becomes ineligible to receive M-to-M transfers, any existing M-to-M student enrolled in that school may exercise an option to transfer to any other eligible school or to their neighborhood school." As noted earlier in this discussion, that order establishes that when the student's race becomes a majority in the receiving school, he may remain at that school, return to his neighborhood school or exercise the M-to-M option and transfer to another school. Since it appears to the court that the proposed "modification" merely duplicates an existing provision in the M-to-M program, the court declines to adopt this alteration.

Similarly, the court sees no reason to modify its earlier order to require the school board to use the racial makeup

of the seventh grades of the feeder elementary schools to determine whether a high school is eligible to receive M-to-M students. At present "any student may transfer from a school where his race is in the majority to any other school within the county in which his race is in the minority". Order of November 3, 1976 at 24. Thus far, school officials appear to have estimated fall enrollments by race in the high schools with some degree of accuracy, and the court sees no reason at this time to modify its order to require a specific procedure.

The final item in the pending motion to alter or amend is defendants' request that the court amend its November order to include a provision requiring the school administration enthusiastically to encourage participation in the M-to-M program by publishing a brochure setting forth the assets of the program and by promting this program fully in the news media. Plaintiffs offer no opposition to this modification and, although the November order contains a related provision requiring publication of a brochure and other publicity, the court concludes that an amendment to this section is appropriate. Accordingly, the November 3, 1976 order is amended to include as a preface to paragraph 3, page 24 the following sentence: "In order to achieve maximum utilization of the M-to-M program, the school administration will enthusiastically encourage participation by publishing a brochure detailing the assets of the program and the schools which are eligible for M-to-M transfers and by promoting this program fully through the news media."

Under the November, 1976 order, the school system is to begin publicity regarding the M-to-M program by March 31 of each year. Children desiring to participate in the program are then given until May 1 of the school year preceding the year in which the transfer will be effective to enroll in the program. The court is aware that the publicity and promotion of the M-to-M program have been delayed this year because of the pendency of

this motion and therefore extends the deadline for registration of students in the M-to-M program until June 4, 1979, for this year only.

Finally, although the court has rejected the modifications to the M-to-M transfer program suggested by the Bi-Racial Committee and seconded by the school board, it wishes to commend the Committee, and especially Ms. Davis, for their attempts to attain an integrated school system in DeKalb County. The court hopes that these efforts will continue and in particular, it hopes that the Committee, in conjunction with the school board, will mount an all-out campaign to enroll black children as M-to-M students in schools which thus far have achieved little integration.

In sum, defendants' motion to alter or amend is DENIED in part and GRANTED in part, and the deadline for registration in the M-to-M program is extended until June 4, 1979, for this year only.

So ORDERED, this 8th day of May, 1979.

/s/ Newell Edenfield
NEWELL EDENFIELD
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

(Caption Omitted in Printing)

MEMORANDUM OPINION

[Filed Sep. 8, 1983]

In this motion for a preliminary injunction, plaintiffs seek to enjoin the defendants' implementation of administrative decisions in three schools in the DeKalb County School System. Specifically, plaintiffs challenge decisions made by defendants concerning Lakeside High School, Redan High School and Knollwood Elementary School. Since the factual circumstances and the requested relief at each school are separate and distinct, the court has trifurcated these proceedings. On August 25, 1983 the court commenced hearing evidence on the Lakeside issues. At the conclusion of the testimony and oral argument, the court orally announced its ruling. The purpose of this memorandum opinion is to provide written findings of fact and conclusions of law on the Lakeside controversy.

Alleging denial of equal protection of the laws, plaintiffs initiated this suit to absolve the vestiges of discrimination allegedly present in the DeKalb County School System.[1] Since a federal question is presented, the court's jurisdiction is invoked pursuant to 28 U.S.C. § 1331.

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[1] This action initially was brought to desegregate the DeKalb County School System. Another member of this court created the minority-to-majority transfer system which is currently functioning in this county.

To state a constitutional violation based on the fourteenth amendment equal protection clause, plaintiffs must show not only racial imbalance in the schools, but also "a current condition of segregation resulting from intentional state action." *Washington v. Davis*, 426 U.S. 229, 240 (1976). To rebut this prima case, educational authorities must demonstrate that the current racial composition does not result from their past or present intentionally segregative action. *Price v. Denison Independent School District*, 694 F.2d 334, 350-51 (5th Cir. 1982). In *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971) the Supreme Court of the United States recognized that "virtually one-race schools within a district is not in and of itself the mark of a system that still practices segregation by law." *Id.* at 26. Yet, in school systems having a history of segregation, there is a presumption against schools that are substantially disproportionate in their racial composition. *Id.* Furthermore, when a proposed plan for conversion from a dual to a unitary system contemplates the continued existence of some schools that are all predominantly of one race, school authorities have the burden of demonstrating that the school assignments are nondiscriminatory. *Id.*

The primary issues presented for the court's consideration are 1) whether defendants purposefully conspired to discriminate against black students by obstructing the minority-to-majority (hereinafter M-to-M) transfers to Lakeside High School and 2) whether the application of the school's capacity limitation figures in implementing the M-to-M program at Lakeside was reasonable.

To support the position that defendants conspired to deny M-to-M transfer students the right to transfer to Lakeside High School, plaintiffs presented evidence of various school officials' statements and actions. For example, Norma Travis, Vice Chairman of the DeKalb County School Board, averred that the superintendent,

Dr. Robert Freeman, had declared "blacks should be kept in their place" during a "get acquainted" luncheon. She opined that Freeman made the statement because he thought she, a member of an ultra-conservative community, would like to hear such a statement.

The scene of the second incident bearing on defendants' intent occurred during a meeting held in the home of Edna Jennings on January 24, 1983. The purpose of this meeting was to discuss the responses to questionnaires sent to parents in various schools. In particular, a majority of the responses to the questionnaires voiced support for the creation of middle schools in the Lakeside area. As a result of comments by Paul Womack, the chairman of the DeKalb County Board of Education, about the M-to-M students' impact on middle schools, however, Travis stated most of the participants at the meeting changed their views on the need for middle schools.

Plaintiffs attempted to demonstrate purposeful discriminatory intent in the manipulation of the M-to-M program by presenting evidence of a conversation between Womack and Philip McGregor, a black member of the school board and the Bi-Racial Committee. McGregor testified that Womack had approached him about endorsing a proposed limitation on the number of M-to-M students in any given school. Specifically, Womack asked him to support a limit that would reflect the county's racial composition. Responding that he did not support such a limit, McGregor reminded Womack such a plan had been presented to and rejected by the judge formerly presiding over this case. Womack then argued that this court might react differently to such a proposal, but McGregor remained steadfast in his views.

Fourth, William Adams, assistant superintendent in charge of projecting enrollments in the various schools, testified about a meeting in Freeman's office on February

15, 1983 in which he and Freeman were discussing the possibilities of closing certain schools. Womack interrupted the meeting to receive information about the M-to-M program at Lakeside. Adams averred that Womack expressed the concern of residents in the Lakeside district about the increased number of black students opting to transfer to Lakeside High School. During this discussion Adams also declared that Freeman, referring to the number of M-to-M transferees, ordered, "Damn it, Bill, cut it off." In response, Adams said he told Freeman that he could not alter the projected number of students. Then Adams alleged that Edward Bouie, assistant superintendent in charge of the M-to-M program, offered to deal with the situation. According to Adams, Bouie stated "I've got the Bi-Racial Committee in my pocket and I can handle Roger Mills." [2]

Subsequently, Bouie testified he received Adams' projection for the 83-84 school year. Seeing a projected enrollment of 1485 an an overall capacity of 1560, Bouie testified that he determined that a limit of 110, rather than 75, should be placed on the number of students permitted to attend Lakeside via the M-to-M program. When this decision was later questioned, Bouie informed Freeman that he was removing the limit because some mistake had occurred. Based on these facts, plaintiffs contend that defendants conspired to deprive them of their equal protection rights.

On the other hand, Freeman testified that he did not make the statement "blacks should be kept in their place." He avvered that her testimony on this point greatly upset him and caused him to lose sleep. In addition, defendants presented testimony of three parents who attended the meeting at the Jennings' home on January 25, 1983. All three witnesses testified that before the

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[2] Mr. Mills, a member of the Bi-Racial Committee, has been a strong advocate for the protection of minority students' rights.

meeting was formally called to order various conversations in small groups occurred. None of these witnesses heard any remarks that the middle schools would increase the number of M-to-M transfer students at Lakeside. Furthermore, at the conclusion of the meeting, two of the parents were avid proponents of the middle schools and felt like the implementation of middle schools in DeKalb County was a distinct possibility. The other parent did not favor middle schools because she was afraid their creation would increase taxes and not benefit her children who currently are in high school.

In addition, defendants presented testimony by Freeman, Bouie and Womack about the February 15, 1983 meeting. Generally, these defendants testified that Freeman and Adams were in conference about the middle school projction figures when Womack entered the office and expressed his constituency's concerns about the increasing number of students at Lakeside. After Womack asked for the projected figures concerning enrollment at Lakeside, Freeman testified that he called Bouie in from the hall to furnish Womack with the most recent projections. Upon supplying the information, Bouie testified that he left Freeman's office. Although Freeman did not remember making the statement, "Damn it Bill, cut it off," to Adams, he unequivocally testified that he did not make the statement with respect to the M-to-M students. Bouie also denied the statements Adams attributed to him.

Reminding the court that as a student and administrator he had witnessed the transaction from a segregated to a non-segregated school system, Bouie emphasized that he would never do anything to inhibit the education of a member of his race. He further explained that he did not understand that Adams' projected enrollment figures included the number of M-to-M students projected to attend the eighth grade. Therefore, Bouie testified that he felt that Lakeside High School

could accommodate at least 110 new M-to-M students. After receiving calls from concerned persons and re-examining the projected enrollment figures, Bouie realized that a mistake had occurred and told Freeman that the limit on the number of students permitted to participate in the M-to-M program would be abolished.

In addition, many witnesses testified about the accomplishments Dr. Freeman had made during the past two years with the DeKalb County School System. During Freeman's tenure as superintendent, the number of students participating in the M-to-M program has doubled. Inter alia, Freeman created the Fernbank Science Center and a writing center in which students from the entire county participate in groups whose racial composition is reflective of the general county school-age population. Freeman also instigated a summer reading program to encourage students to read when school was not in session. In the opinion of Elizabeth Andrews, a member of the DeKalb County Board of Education and various civic groups, including the National Association for the Advancement of Colored People, these activities pulled students from each region together to teach them how to cooperate and interact with each other. The programs, according to Andrews, improved the racial relations between black and white students.

After receiving information that minority students were not well represented in extra-curricular activities because of the lack of available transportation, Dr. Freeman approved the financing of an activities bus that would return students to their respective homes after an extra-curricular event. He also approved the revising of the athletic schedules to promote more interaction of predominantly white schools with predominantly black schools. As superintendent, Freeman has nominated and the Board of Education appointed four blacks and two women as assistant superintendents. Currently, 18 percent of high level administrators in the school system are

black in a county where 36 percent of the school-age children in the county are black. In addition, Freeman instigated an early retirement plan in which top administrators could opt to receive a bonus for retiring before they were so required. This plan not only has been cost effective, but also has presented the opportunity to appoint additional minorities under an affirmative action plan.

Several of the minority administrators testified about their working relationship with Freeman. For example, Dr. Eugene Walker, an administrator with the DeKalb County Community Center Unit of the DeKalb County School System, averred that he was hired by Freeman to operate programs with affirmative action. An assistant superintendent for the southern area of the county, Melvin Johnson explained that he had worked under three superintendents. He opined that the attitudes of principals and teachers had improved since Freeman had assumed office because there were no racial overtones in his administration. In accordance with those views, Eugene Thompson, assistant superintendent in charge of affirmative action, stated that he had been hired by Freeman, who was sensitive to the needs of blacks. He explained that Freeman did not send representatives to speak to predominantly black groups—he attended the meetings to determine their concerns and to answer their questions. Bouie, the assistant superintendent in charge of the M-to-M program, concurred in these opinions. He emphasized that Freeman did not impose any restrictions on his management of the program. Bouie also reiterated that he made the decision to place the 110 limit on the number of possible transferees to Lakeside.

As the fact-finder, this court was required to make credibility determinations based on the presented evidence with a view of not imputing perjury to any individual. This task was relatively simple, however, because most of the testimony could be reconciled. For

example, during the meeting at the Jennings' home all the witnesses testified that there were several small group discussions before the official meeting began. Although one witness testified an incriminating statement was made by Womack at the meeting, three other witnesses averred that the statement was not made in their presence. Therefore, assuming arguendo the statement was made, the impact of the statement was not disseminated to the group at large.

Yet, with respect to two circumstances in which directly contradictory evidence was presented, the court had to find one version of the facts more credible than the other version. Based on the tstimony as a whole, this court cannot give credence to perhaps the two most damaging statements imputed to Freeman during the course of this trial. The court finds that Dr. Freeman has conscientiously contributed to the improvement of interaction between the races in the DeKalb County area. He has promoted programs that are color-blind and are for the benefit of all children within the community. The court was particularly impressed with testimony by black community leaders not connected with the school system who testified that Freeman has promoted equality for black individuals when that course of conduct was not socially popular. In light of the many programs and activities that Freeman has inspired and approved, this court commends rather than condemns him for his work in promoting the educational needs of all children in the DeKalb County School System.

Likewise, this court cannot impute any purposeful discriminatory intent to Bouie. The court does not believe that Bouie would intentionally prohibit a member of this race from obtaining the educational background he or she desired because he was prejudiced against that child's color. Rather, the court finds that there were serious breakdowns in communication between Adams and Bouie. This lack of communication resulted in the morass of

complications in effectuating the school system's programs.

Although plaintiffs introduced Womack's conversation with McGregor to show the specific intent to discriminate against blacks, this court interprets this action as an attempt to approach this court through the Bi-Racial Committee. Accordingly, no unlawful motive can be imputed to Womack for attempting to litigate an issue.

Therefore, the court finds that plaintiffs have failed to show any invidious discriminatory intent on the part of any defendant in this case. Injunctive relief will not be granted on this ground.

The second issue presented for the court's consideration is whether the application of the school system's 26 students per one teaching station ratio was reasonably applied to limit the capacity of Lakeside to 1560 students. As a preliminary matter, this court will endeavor to give deference to proper educational policies established by a board of education except when those policies are not administered fairly to all individuals without regard to race, creed or color. To show that the number of 1560 was unreasonable, plaintiffs presented expert testimony which argued that the true capacity of Lakeside was 1638. According to defendants' expert, however, the actual optimum capacity of Lakeside is 1430. Yet, neither expert testified that the 26/1 ratio was unreasonable. Since this ratio has been used historically and is rationally related to the legitimate state purpose of promoting education, this court finds that use of the 26/1 ratio is reasonable.

Nevertheless, the court also finds that the 26/1 ratio was not fairly and accurately applied in this instance. As stated previously, the court finds that the confusion in this case arose from a breakdown in communications between the assistant superintendent in charge of the planning of enrollment projections and the assistant su-

perintendent in charge of the M-to-M program. The court is absolutely convinced that Adams was including projections for the new M-to-M transfers in his statistics and thought that everyone else knew it. To the contrary, however, the court is equally convinced that the other administrators did not understand this fact.

The administrator in charge of implementing the M-to-M program initially placed no limitation on the number of M-to-M students Lakeside could accept. After reviewing statistics from the planning office, he noticed a space available for 75 students and arbitrarily established a limit of 110 students. According to his testimony, Bouie would have established a maximum enrollment of 1595. When questioned about the 110 limit, Bouie removed the limit. Thereafter an unexpected large number of M-to-M applicants sought admission into Lakeside, but were refused admittance because their presence would place Lakeside over its computed capacity of 1560.[3] The transition from no limit to a maximum enrollment of 1595 then to no limit and finally to a maximum enrollment of 1560 demonstrates that school officials did not fairly, uniformly and accurately apply the 26/1 ratio in administering the M-to-M program at Lakeside High School.

Therefore, for the foregoing reasons, the court is compelled to grant relief to the plaintiffs. The court therefore confirms its oral order of August 31, 1983 directing the defendant, DeKalb County School System, to accept

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[3] The capacity of the high school was computed by the following formula:

> Total number of teaching stations minus the number of special education rooms multiplied by the figure of 26 students per station equals the capacity of the school. Applying this formula reveals that the capacity of Lakeside is [63 (total stations)—3 (special education)] x 26 (students per station) = 1560 (total capacity).

students on the M-to-M waiting list for attendance at Lakeside up to a maximum enrollment of 1595.

IT IS SO ORDERED this 8th day of September, 1983.

/s/ William C. O'Kelley
WILLIAM C. O'KELLEY
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

(Caption Omitted in Printing)

MEMORANDUM OPINION

[Filed Feb. 22, 1984]

In this motion for a preliminary injunction, plaintiffs seek to enjoin defendants from building an addition to Redan High School.[1] After a trial on the merits, the court orally announced its ruling. The purpose of this memorandum opinion is to provide written findings of fact and conclusions of law on the Redan controversy.

Alleging denial of equal protection of the law, plaintiffs have invoked the jurisdiction of this court pursuant to 28 U.S.C. § 1331. At issue is whether defendants' actions in proposing an addition to Redan were discriminatory or designed to promote segregation and to hinder desegregation in the DeKalb County School System.

In 1969 the DeKalb County School System was converted from a dual to a unitary school system. *See* Order of November 3, 1976 (requiring defendants to "take affirmative action to disestablish all school segregation and to eliminate the effects of the dual school system"). As a result, the freedom-of-choice plan in the DeKalb

[1] Originally the motion for a temporary restraining order dealt with issues at three schools: Lakeside High School, Redan High School and Knollwood Elementary School. The court bifurcated the issues and decided the Lakeside controversy in September 1983. Plaintiffs orally abandoned the Knollwood issues prior to trial. Accordingly, the sole issues remaining relate to Redan High School.

County Schools was abolished; all students were required to attend school in the district of their residence. Subsequently, the court created a majority-to-minority (hereinafter M-to-M) transfer system, in which a student attending a school in which his or her race was in the majority could transfer to a school in which his or her race was in the minority. Implementation of the M-to-M program was in accordance with the court's "objective of eradicating segregation and perpetuating desegregation." Order of November 3, 1969. Recognizing that new school site purchases and attendance zone changes would be inevitable, the court declared that those actions should further this objective, but also should be considered "in the context of the circumstances existing at the time and the feasibility and practicality of available alternatives." *Id.*

When a racially discriminatory school system has been found to exist, the Supreme Court has required local school boards to "effectuate a transition to a racially nondiscriminatory school system." *Brown v. Board of Education*, 349 U.S. 294, 301 (1955) (Brown II). School boards operating dual systems have been "clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." *Green v. County School Board*, 391 U.S. 430, 437-38 (1968). Each instance of a failure or refusal to fulfill this affirmative duty continues the fourteenth amendment violation. *Columbus School Board v. Penick*, 443 U.S. 449, 459 (1979).

Once a school system has been fully converted from a dual to a unitary system, the Supreme Court has declared: "absent a constitutional violation, there . . . [is] no basis for judicially ordering assignment of students on a racial basis." *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 28 (1971).[2] To recover for a

[2] In *Swann*, Chief Justice Burger emphasized the limited involvement by the judiciary in the affairs of the school system as follows:

violation of the equal protection clause, plaintiffs must show not only racial imbalance in the schools, but also "a current condition of segregation resulting from intentional state action." *Washington v. Davis*, 426 U.S. 229, 240 (1976). To rebut this prima facie case, educational authorities must demonstrate that the current racial composition does not result from their past or present intentionally segregative action. *Price v. Denison Independent School District*, 694 F.2d 334, 350-51 (5th Cir. 1982).

Examining the question of discriminatory intent, the Supreme Court has ruled that actions having foreseeable and anticipated disparate impact are relevant to demonstrate a forbidden purpose. *Columbus Board of Education v. Penick*, 443 U.S. 449, 464 (1979). "Adherence to a particular policy of practice 'with full knowledge of the predictable effects of such adherence upon racial imbalance is one factor among many others which may be considered by a court in determining whether an inference of segregative intent should be drawn." *Id.*, at 465.

To satisfy the burden of establishing a prima facie case, plaintiffs introduced evidence that Redan High School had been operating in excess of capacity since the 1978-79 school year. Rather than redistrict students to relieve this problem school officials added portable classrooms to Redan on three occasions. Testimony by Assist-

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> Neither school authorities nor district courts are constitutionally required to make year/by/year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system. This does not mean that federal courts are without power to deal with future problems; but in the absence of a showing that either the school authorities or some other agency of the State has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the school, further intervention by a district court should not be necessary.

Swann v. Charlotte-Mechlenburg Board of Education, 402 U.S. 1, 31-32 (1971).

ant Superintendent William Stewart Adams indicated that the school board had never considered transferring students from a predominantly white school district into predominantly black schools.

The school board's proposed solution to the overcrowding problem at Redan was to build an addition to the school. This edifice would be located on property near Miller Road and Covington Highway and would provide classrooms for eighth and ninth grade students attending Redan High School.

It is undisputed that the school board has consistently rejected the concept of middle schools. Currently there are no junior high schools in the DeKalb County School System. Plaintiffs contended that the school board's unusual solution to the overcrowding problem, when considered with the school board's refusal to rezone Redan students and their placing of temporary structures on the Redan campus in the past, demonstrated defendants' desire to maintain Redan High School as a predominantly white school. This maintaining of the status quo, according to plaintiffs, infringed upon the rights of black students at South West DeKalb and Avondale high schools because they were denied the opportunity of attending a more racially mixed school. Therefore, plaintiffs have requested that the court enjoin the building of the Redan addition.

In rebuttal defendants argued that their actions were not discriminatory because (1) plaintiffs' proposed changes of attendance lines were not feasible; (2) except as a last resort, educational reasons precluded the transferring of students to noncontiguous school districts; (3) after considering other alternatives, the school board decided that the building of the addition was a unique solution to a unique problem; and (4) rather than promoting segregation, the new addition to Redan would increase

desegregation because the school could then accommodate M-to-M transfer students.[3]

In reviewing this matter, the court must examine whether defendants' actions were unlawfully motivated and were designed to deprive class members of equal protection of the law. Unless plaintiffs have shown the deprivation of a constitutional right, this court cannot interfere with the internal management of the school system. Therefore, this court is not required to comment upon the quality of education students operating under the school board's plan may receive; such determination is confined to the sound discretion of the administrators. In deciding whether defendants' actions are unlawful the court will examine each defense raised by defendants.

Defendants first showed that plaintiffs' proposal for changing the Redan attendance zone had not been feasible. The enrollment at Redan began to exceed its reasonable capacity in the 1978-79 school year. At that time both Avondale and Southwest DeKalb were operating with more students than the respective structures were designed to accommodate. This practice continued at Southwest DeKalb until the 1982-83 school year when there were 60 vacancies. In comparison, Avondale began to have seats available in the 1980-81 school year. Currently Southwest DeKalb has 166 spaces available and Avondale has approximately 123. The combined number of 289 seats, however, is not sufficient to accommodate the 746 students currently exceeding the capacity of 1560 at Redan.

The evidence further shows that these two schools have not been able to fully satisfy the overcrowding problem at Redan in the past. For example, in the 1978-79 and 1979-80 school years neither Avondale nor Southwest DeKalb

[3] Since 1979 students wishing to participate in the M-to-M program have not had the opportunity to request attendance at Redan because the school was overcrowded.

could accept additional students because they were both over capacity. In the fall of 1980, Redan was overpopulated by 522 students. Even though Avondale had 53 spaces available, Southwest DeKalb was not able to receive any additional students. Although the number of seats available at Avondale increased during the following years, the student population within the Redan district also increased. For example, in the 1982-83 school year, Redan had an excess of 542 students; the combined number of seats available to Southwest DeKalb and Avondale totaled only 170. Similarly in the current school year, Redan has approximately 746 students more than the reasonable capacity of 1560. The other two schools have space available for a total of 289 students. Therefore, rezoning students from the Redan district into these two schools was not feasible at any time because this solution would be only partially remedial in nature.

Even if sufficient space were available to Southwest DeKalb and Avondale, the court finds that meritorious reasons exist for not changing the attendance zones. First, the evidence showed that the majority of the indigenous black student population in the Redan district reside in the southern portion of the school district. Since the Southwest DeKalb school district is south of the Redan district, a reasonable rezoning of students currently residing in the Redan district would have the effect of removing virtually all the indigenous black population from Redan and increasing the number of black students at the predominately black Southwest DeKalb High School. Clearly, this change would promote segregation in both high schools.

The rezoning of students currently residing in the Redan district into the Avondale district would be equally unacceptable. Unlike the Southwest DeKalb district, which is contiguous to the southern boundary of Redan, the Avondale district only intersects with the Redan district at one point. If the court changed the attendance

lines and required students residing in the northwestern corner of the Redan district to attend Avondale High School, those students would have to travel through the Towers High School district before they entered the Avondale district. Since noncontiguous rezoning has generally been condemned except in the most extreme circumstances, this court finds that the transferring of Redan students to Avondale would not be feasible or practicable because a less strident solution to the problem exists.

The school board further defended the reasonableness of its proposed erection of the Redan addition by presenting the following evidence. Testimony by school officials revealed that defendants had attempted on three occasions to secure permission from the Bi-Racial Committe to construct a new high school on property located near Stephenson Road. In each instance the Bi-Racial Committee refused to permit the school board to purchase the property. In addition, defendants considered building additional classrooms on the existing Redan campus, but discovered that the construction would violate state building code regulations.

The building of an addition to Redan on a separate campus was a unique solution to a unique problem. In the history of the DeKalb school system there had never been overcrowding at any school to the extent of the current situation at Redan. The building of the new edifice not only would eradicate the over-capacity problem at Redan High, but also would provide M-to-M students with the opportunity to transfer to Redan, which has not received M-to-M students since 1979.

The above reasons by the school board persuade this court to find that the school board's decision to build the addition to Redan was not motivated by unlawful racial considerations. Having found that the school board's decision was not unconstitutional, this court is not required to evaluate the educational benefits that may arise from

the construction of the Redan addition. Furthermore, the court will decline to examine whether plaintiffs' proposals to the overcrowding problem would provide for better educational growth or more integration in the school system because "absent a constitutional violation there . . . [is] no basis for judicially ordering assignment of students on a racial basis." *Swann v. Charlotte-Mechlenberg Board of Education*, 402 U.S. at 28. Since plaintiffs have failed to demonstrate that defendants contravened their rights under the equal protection clause, the court denies plaintiffs' motion for a preliminary injunction.

In summary, the clerk is directed to enter judgment in favor of defendants and against plaintiffs. The motion for a preliminary injunction on the Redan issue is denied. Prior to trial counsel for plaintiffs abandoned the portion of the motion dealing with Knollwood Elementary School. Accordingly, no ruling on this portion of the motion is required.

IT IS SO ORDERED this 22nd day of February, 1984.

/s/ William C. O'Kelley
WILLIAM C. O'KELLEY
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

(Caption Omitted in Printing)

ORDER

[Filed Jul. 11, 1984]

Presently pending before the court is plaintiffs' motion for attorney's fees and costs incurred in the "Lakeside High School" phase of this action. The court issued its memorandum order on September 8, 1983 and its final judgment on February 29, 1984, and plaintiffs filed this motion on May 30, 1984. Because plaintiffs failed to file the motion within the time limits set by the local rules of the United States District Court for the Northern District of Georgia, the court denies plaintiffs' motion.

The plaintiffs claim attorney's fees and costs in this action pursuant to the Civil Rights Attorney's Fees Award Act of 1976, 42 U.S.C. § 1988 (1982), and 28 U.S.C. § 1920 (1982). In their brief, plaintiffs state that the latter statute, and Local Rule 351.1, do not govern the costs requested in this motion. Section 1988 allows the court discretion to award attorney's fees as part of the costs to prevailing parties in civil rights actions.

The district courts may set forth rules governing their practice and procedure which are not inconsistent with the Federal Rules of Civil Procedure. Fed.R.Civ.P. 83. Under Local Rule 421.1, a party seeking attorney's fees pursuant to § 1988 must file a motion within fifteen days

of the entry of the final judgment as to the party requesting the award. Failure to do so constitutes a waiver of the claims for attorney's fees under § 1988. Local Rule 421.2. Plaintiffs filed the instant motion approximately seven months after the issuance of the memorandum order, and ninety days after the entry of the final judgment.

Plaintiffs concede that district courts are authorized to promulgate rules governing the timeliness of claims for attorney's fees under § 1988. *White v. New Hampshire Dep't of Employment Sec.*, 455 U.S. 445 (1982); *Brown v. City of Palmetto*, 681 F.2d 1325, 1326-27 (11th Cir. 1982). They contend, however, that the term "final judgment" in Local Rule 421.1 could mean either a final trial court judgment or an appellate determination. Plaintiffs urge that the court define final judgment as an appellate decision. Because the court's order has been appealed, plaintiff's motion therefore would be timely.

The court declines to follow plaintiffs' suggestion that final judgment means final appellate decision. Strictly speaking, an appellate decision is not a "judgment," but is a mandate to the lower court. Plaintiffs cited a case decided by the United States Court of Appeals for the Seventh Circuit, *McDonald v. Schweiker*, 726 F.2d 311 (7th Cir. 1983), concerning the requirement of the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d) (1982), that fee application be filed within thirty days of final judgment. The court, noting that "final judgment" has different meanings in various contexts within the United States Code, held that final judgment under the EAJA meant final appellate decision. 726 F.2d at 313.

McDonald is not on point, because the court interpreted a federal statute which logically could refer to appellate determinations. In the instant case, "final judgment" appears in a local district court rule, regulating district court procedure. This local rule could not

purport to cover appellate procedure, and logically refers only to district court final judgments. Additionally, plaintiffs cited *White v. New Hampshire Dep't of Employment Sec.*, 455 U.S. 445 (1982) for the proposition that final judgment can be interpreted in various ways. In that case, however, the Court discussed confusion regarding the finality of district court judgments during litigation, *id.* at 453, and thus is inapposite.

Finally, the appeal to which plaintiffs refer is not of the Lakeside phase of the case, in which plaintiffs prevailed and seek attorney's fees. Rather, plaintiffs appealed the "Redan High School" portion of the case, in which defendants prevailed. The appeal thus has no bearing on the Lakeside portion of the case.

Plaintiffs also assert that this court may ignore Local Rule 421.1 in the interests of substantial justice. Local rule are "mandatory and are not to be waived." *Calmaquip Eng'g West Hemisphere Corp. v. West Coast Carriers, Ltd.*, 650 F.2d 633, 636 (5th Cir. Unit B 1981). In *Calmaquip*, the court cited with approval *Woods Constr. Co. v. Atlas Chem. Indus., Inc.*, 337 F.2d 888 (10th Cir. 1964), a decision of the United States Court of Appeals for the Tenth Circuit which upheld a local rule governing timeliness of costs requests. 650 F.2d at 636 n.4. The court in *Woods* reasoned that a definite time limit was needed on filing such claims, and that a litigant has a right to rely on local rules which bind parties and the court. *Id.* (citing 337 F.2d at 891).

Because of these important concerns, district courts possess extremely limited discretion to excuse compliance with local rules. *See Wirtz v. Hooper-Holmes Bureau, Inc.*, 327 F.2d 939 (5th Cir. 1964). In the instant case, the Northern District of Georgia promulgated Local Rule 421.1 specifically to comply with *Brown v. City of Palmetto*, 681 F.2d 1325 (11th Cir. 1982). In *Brown*, the court required local rules imposing time limits on attorney's fees filings under § 1988 to be explicit. *Id.* at

1327. "*Absent violation of a local rule* a claim for attorney's fees would be untimely only on a showing of unfair surprise or prejudice." *Id.* (emphasis added). Plaintiffs' claim that they should be excused from compliance with the rule is negated by the language of *Brown*, which clearly indicates that parties must comply with an explicit provision governing time constraints for § 1988 filings. Even if the court found exercise of discretion to be proper, plaintiffs offered no explanation whatsoever for their late filing. The court thus has no justification to ignore Local Rule 421.1 and denies plaintiffs' motion.

IT IS SO ORDERED this 11th day of July, 1984.

/s/ William C. O'Kelley
WILLIAM C. O'KELLEY
United States District Judge

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

No. 84-8286

WILLIE EUGENE PITTS, *et al.*,
Plaintiffs-Appellants,

v.

ROBERT FREEMAN, *et al.*,
Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

March 22, 1985

Before VANCE and ANDERSON, Circuit Judges, and PITTMAN*, District Judge.

PITTMAN, District Judge:

In 1969, the district court issued a desegregation order that required the defendants to dismantle the previously dual school system and to institute a unitary system. In 1983, the black plaintiff class filed a motion in that proceeding to enjoin the defendants from expanding and constructing certain school facilities to relieve overcrowding at the Redan High School. In ruling on that motion, the district court, without giving notice and

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* Honorable Virgil Pittman, U.S. District Judge for the Southern District of Alabama, sitting by designation.

holding a hearing on the issue, stated that the DeKalb County School System was unitary. It proceeded to find that the defendants did not act with discriminatory intent and denied the injunction. The plaintiffs appealed. They contended the district court erred in characterizing the DeKalb system as unitary and in making proof of discriminatory intent a requisite to affording requested relief. We agree and reverse and remand for further consideration.

The plaintiffs raised these three issues:

I. Whether the district court erred in holding that the DeKalb County School System was a unitary system and that plaintiffs were therefore required, under the Fourteenth Amendment to the United States Constitution, to show purposeful discrimination in order to prevail.

II. Whether the district court erred in holding that plaintiffs must prove purposeful discrimination to prevail since the complaint in this action is predicated on Title VI of the 1964 Civil Rights Act and the regulations thereunder, and proof of invidious motives need not be shown in connection with such claims.

III. Whether the district court was clearly erroneous in finding that the plaintiffs had failed to show purposeful and intentional discrimination and whether the court's findings were inadequate under Fed.R.Civ.P. 52.

We resolve issue I in favor of the appellants. Issue II was not addressed by the district court nor is it necessary to be addressed by this court. It may be appropriate to address it on remand. Issue III is moot because of the court's holding on the first issue.

The plaintiffs, in a black class action, originally instituted this action in 1968 against the DeKalb County Board of Education and various school authorities al-

leging that the DeKalb Copnty School System was unconstitutionally segregated on the basis of race. The school system at that time operated under a "freedom of choice" plan. Although each school had a corresponding neighborhood school attendance district to delineate which students were to attend which school, students were free to transfer to schools outside their attendance district. The action resulted in a 1969 desegregation order that required the defendants to dismantle the previous dual school system, to eliminate its effects, and to institute a unitary system. The court ordered that all students be assigned to the school in their respective neighborhoods. Students thus were required to attend the school located in the attendance district in which they resided. Each attendance district contained only one school. The attendance districts served no other purpose than to delineate which students were to attend which schools. The district court retained jurisdiction to oversee implementation of the order. The court exercised this jurisdiction several times during the succeeding years to enter orders on matters brought before it by motion. This appeal arises from such an order in which the district court refused to enjoin the expansion and construction of certain school facilities proposed by the school board to relieve overcrowding at Redan High School.

Redan High School, which has a predominantly white student population, has been operating in excess of its capacity since the 1978-79 school year. The number of students attending Redan has continued to increase at such a rate that they exceeded the school's capacity by 808 students in the 1984-85 school year. As an interim solution to this overcrowding problem, school officials have added portable classrooms to Redan on three occasions. As a more permanent solution, the school board decided to construct a new facility to accommodate the excess of students. Under this "Redan II" plan, Redan's attendance district would remain unchanged. Students in the tenth through twelfth grades would continue to use

the existing Redan High facility, while students in the eighth and ninth grades, who previously would have attended Redan High, would use the new facility. This arrangement would be unique in DeKalb County because it has no middle schools.

The plaintiffs in 1983 filed the motion that is the subject of this appeal seeking to enjoin the defendants from expanding the capacity of Redan High School by adding portable classrooms and constructing a new building. The plaintiffs alleged that the increased capacity of Redan, which would accommodate the existing overflow of white students there, avoided reassignment of those white students to nearby undercapacity high schools that were predominantly black. The school board's solution to the overcrowding, the plaintiffs argued, was intended to avoid desegregation and indeed would have a segregative effect. The plaintiffs argued that this avoidance of segregation —even if unintentional—violated the 1969 injunction requiring that the construction and expansion of school facilities be carried out "with the objective of eradicating segregation and perpetuating desegregation." *Pitts v. Cherry*, Civil Action No. 11946 at 7 (N.D.Ga. June 12, 1969) (currently *sub nom Pitts v. Freeman*). The plaintiffs proposed several alternative solutions to the Redan overcrowding problem. These proposals sought to relieve the overcrowding by redrawing the boundary lines of certain of the schools' attendance districts. The attendance districts as redrawn under the plaintiffs' proposals would require some students, who previously would have attended Redan, to attend other, undercapacity high schools within the DeKalb County School System. Unlike the defendants' plan, the plaintiffs asserted, these proposals would have a desegregative effect and would carry out the defendants' duty to eliminate the vestiges of its previous dual school system.

The district court, after a hearing, refusing to enjoin the planned expansion of Redan High School on the

grounds that the defendants' actions were not motivated by discriminatory intent. The court asserted at the outset that "[i]n 1969 the DeKalb County School System *was converted from a dual to a unitary system.*" *Pitts v. Freeman*, Civil Action No. 11946 at 1 (N.D.Ga. Feb. 22, 1984) (emphasis added). It is undisputed that no hearing with notice had been held to determine whether the DeKalb County School System had been converted to a unitary system. The court proceeded to hold that in reviewing the planned expansion of Redan High School, it had to "examine whether defendants' actions were unlawfully motivated and were designed to deprive class members of equal protection of the law." *Id.* at 5. "At issue," the court stated, "is whether defendants' actions in proposing an addition to Redan were discriminatory or designed to promote segregation and to hinder desegregation in the DeKalb County School System." *Id.* at 1. The court then found, on the basis of the evidence presented, that the defendants' decision to expand Redan High School "was not motivated by unlawful racial considerations." *Id.* at 8. It thus denied the plaintiffs' motion for an injunction. The court expressly declined to examine whether the plaintiffs' proposed solutions to the overcrowding would provide for better educational growth or more integration in the school system. *Id.* at 9.

The plaintiffs appealed, contending that the district court erred in characterizing the DeKalb County School System as unitary and in making proof of discriminatory intent a requisite to affording the requested relief. This court agrees, and, therefore, must reverse the district court's decision and remand the case for further consideration.

A line of Fifth Circuit cases[1] established the procedure to be used in this circuit in bringing school de-

[1] Decisions of the old Fifth Circuit are binding precedent in this circuit. *See Bonner v. City of Prichard*, 661 F.2d 1206, 1209-11 (11th Cir. 1981) (*en banc*).

segregation cases to a conclusion. *See, e.g., United States v. Texas Education Agency*, 647 F.2d 504 (5th Cir.1981) (Unit A), *cert. denied*, 454 U.S. 1143, 102 S.Ct. 1002, 71 L.Ed.2d 295 (1982); *Lee v. Macon County Board of Education*, 584 F.2d 78 (5th Cir.1978). The courts consistently have recognized that a previously segregated dual school system does not automatically become desegregated just because a constitutionally acceptable plan is adopted and implemented. *See, e.g., Texas Education Agency*, 647 F.2d at 508. District courts must retain jurisdiction over such cases to insure not only the implementation of the desegregation plan but also "the achievement of the ultimate goal—a unitary school system in which the State does not discriminate between public school children on the basis of race." *Lee*, 584 F.2d at 81. In order to conclude a school desegregation case, a district court must hold a hearing to determine if the school system indeed has achieved unitary status. *Texas Education Agency*, 647 F.2d at 509; *Youngblood v. Board of Public Instruction of Bay County*, 448 F.2d 770, 771 (5th Cir.1971). The plaintiffs should receive notice of the hearing's purpose, and the hearing should give them an opportunity to show why the court should continue to retain jurisdiction. *Texas Education Agency*, 647 F.2d at 509.

The district court did not follow these procedures in the case at bar. Its characterization of the DeKalb County School System as unitary was error. As the defendants suggest, it is possible that the district court did not intend its use of the word "unitary" to be equated with the unitary status that requires dismissal of the action. The court may have been stating merely that a constitutionally acceptable desegregation plan was implemented in 1969 thus making the school system unitary in some respects. Yet the district court committed error by applying the wrong standards of proof when it proceeded to require the plaintiffs to prove discriminatory in-

tent, a requirement that ordinarily would be appropriate only after a finding of full unitary status.

Until the DeKalb County School System achieves unitary status, it has an affirmative duty to eliminate the effects of its prior unconstitutional conduct. The United States Supreme Court has held that a previously segregated school system is under an "affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." *Columbus Board of Education v. Penick*, 443 U.S. 449, 459, 99 S.Ct. 2941, 2947, 61 L.Ed.2d 666 (1979), *quoting Green v. County School Board*, 391 U.S. 430, 437-38, 88 S.Ct. 1689, 1693-94, 20 L.Ed.2d 716 (1968). *See Graves v. Walton County Board of Education*, 686 F.2d 1135, 1143 (5th Cir.1982) (Unit B). The Court has applied this duty specifically to the construction of new school facilities:

> In devising remedies where legally imposed segregation has been established, it is the responsibility of local authorities and district courts to see to it that future school construction and abandonment are not used *and do not serve* to perpetuate or re-establish the dual system.

Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 21, 91 S.Ct. 1267, 1279, 28 L.Ed.2d 554 (1970) (emphasis added). *See Lee v. Autauga County Board of Education*, 514 F.2d 646, 647-48 (5th Cir. 1975). The district court's 1969 desegregation order in this case applied these duties to DeKalb County:

> To the extent consistent with the proper operation of the system, the County Board will, in locating and designing new schools, in expanding existing facilities, and in consolidating schools, do so with the objective of eradicating segregation and perpetuating desegregation.

Pitts v. Cherry, Civil Action No. 11946 at 7 (N.D.Ga. June 12, 1969) (currently *sub nom Pitts v. Freeman*). Therefore, the DeKalb County Board of Education has an affirmative duty to solve the Redan High School overcrowding problem in such a way that it furthers desegregation and helps eliminate the effects of the previous dual school system.

In light of the defendants' affirmative duty to desegregate, it was error for the district court to hold that the defendants' planned expansion of Redan High School could be enjoined only if it was motivated by discriminatory intent. Until the DeKalb County School System achieves unitary status, official action that has the *effect* of perpetuating or reestablishing a dual school system violates the defendants' duty to desegregate. *See Wright v. Council of City of Emporia*, 407 U.S. 451, 460-62, 92 S.Ct. 2196, 2202-03, 33 L.Ed.2d 51 (1972). *Accord Columbus Board of Education*, 443 U.S. at 459-60, 99 S.Ct. at 2947-48. That duty likewise is violated when the school board fails to consider or include the objective of desegregation in such decisions as whether to construct new facilities. *See Lee*, 514 F.2d at 647-48. Therefore, if expanding the capacity of Redan High School would increase or perpetuate segregation as the plaintiffs claim, the district court should have enjoined the expansion; or, if expansion plans and construction have mooted that question, it should have enjoined the use of the facility as planned—regardless of the defendants' lack of discriminatory intent.

We do not hold, however, that the defendants' affirmative duty compels them to adopt the most desegregative alternative available. That position was rejected by this court in *Lee v. Annison City School System*, 737 F.2d 952 (11th Cir.1984). There we affirmed the district court's approval of a new construction proposal which was proposed by the school board in good faith, and which, although the court assumed that the plaintiff's

proposals would achieve even greater desegregation, would "achieve greater desegregation within the limits of practicalities such as funding and transportation." *Id.* at 957.

Therefore, this court must remand this case for the district court to do what it expressly declined to do before: examine the segregative and desegregative effects of the defendants' actions. On remand, the district court should study plaintiffs' and defendants' alternative solutions to the overcrowding problem to find the solution that best solves the problem in light of the valid educational concerns and other practicalities voiced by the defendants if the system is attempting to achieve greater desegregation. This court does not hold that the district court on reconsideration must enjoin the planned expansion of Redan High School if plans and construction of the facilities have mooted such action; however, the defendants will proceed at their own risk. One result could be the enjoined use of the facilities as planned.

Several of the district court's factual findings argue in favor of the defendants' plans. The district court relied on erroneous standards in drawing its conclusions. It may be that these plans would have a desegregative effect or would have less long-term segregative effect. The court remands the case to have the district court review the defendants' actions under the proper standards.

Because this court remands this action on the basis of the district court's misapplication of an intent standard, it does not address the second or third issue.

REVERSED AND REMANDED for proceedings consistent with this opinion.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil No. C-11946

WILLIE EUGENE PITTS, *et al.*

versus

ROBERT FREEMAN, *et al.*

ORDER

[Filed Oct. 31, 1985]

The instant action is before the court on remand from the United States Court of Appeals for the Eleventh Circuit. A summary of the case's history is necessary for an understanding of its current procedural posture. The plaintiffs filed this lawsuit in 1968, claiming that defendants operated a racially segregated school system in DeKalb County, Georgia. In 1969, the court enjoined defendants from further racial discrimination, and set forth a plan to speed desegregation.

Plaintiffs again sought the court's assistance in 1976, claiming that defendants had violated the 1969 order. In the 1976 order, the court created a bi-racial committee to advise the school board and approve zone changes and school site purchases. The court also made certain modifications in the majority to minority (M-to-M) program.

Later orders were entered in 1977 and 1979. The earlier order concerned a zone change; the latter the M-to-M program. In both decisions, the court noted that

within the county the housing patterns were changing rapidly: blacks were moving in and white were moving out. This pattern in turn caused racial transition in the schools.

The next action taken in the case concerns the remand before the court. In 1983, plaintiffs sought an injunction claiming *inter alia* that the use of portable classrooms at Redan High School and the proposed building of a new school (Redan II) within the Redan attendance zone promoted segregation. The portable classrooms and Redan II were planned to alleviate severe overcrowding within the zone. Redan II would be an 8th and 9th grade school.

The court held a trial on the merits on February 1, 2, 3, 6, and 10, 1984. At the conclusion of the trial, the court made oral findings that defendants did not intend to discriminate and that Redan II did not have an adverse impact upon integration. (Tr., Vol. V, at 824). The court also found that plaintiffs' proposed alternatives, the "Rainbow" and "Lithonia" or "Stolee" plans, would create more segregation than currently existed. (*Id.*)

On February 22, 1984, the court entered written findings of fact and conclusions of law. Noting that the school system had been converted from dual to unitary in 1969, the court determined that plaintiffs had to prove defendants' intent to discriminate. Plaintiffs did not meet this burden. Although the order did not state specifically that Redan II had a nonsegregative effect, the court's findings indicated that such was the case.

The Eleventh Circuit reversed and remanded the case on March 22, 1985. *Pitts v. Freeman*, 755 F.2d 1423 (11th Cir. 1985). Noting that the district court had stated that the DeKalb school system was unitary, the appellate court cited a line of Fifth Circuit cases establishing the procedure to be followed in concluding school desegregation cases. A previously segregated dual system does not become desegregated automatically because a

constitutionally acceptable plan is implemented. The ultimate goal is achievement of a unitary system. To conclude a case, the district court must hold a hearing to determine if the system is unitary. Plaintiffs should receive notice to allow them an opportunity to show the court why jurisdiction should be retained. Since the case was not being terminated, the district court had not followed this procedure. *Id.* at 1426.

The appellate court noted that as defendants pointed out, the use of the word "unitary" in the district court's order may not have referred to that status which closes a case, but may have meant that a constitutionally acceptable plan was implemented. Nonetheless, plaintiffs did not have to prove discriminatory intent, which is required only after a finding of full unitary status. *Id.*

The court of appeals did not suggest that a hearing be held to determine whether the system is unitary. Rather, it apparently assumed that unitary status had not been accomplished. "Until the DeKalb County School System achieves unitary status, it has an affirmative duty to eliminate the effects of its prior unconstitutional conduct." *Id.* This duty specifically includes new school construction, to insure that it does not serve to perpetuate or reestablish the dual system. *Id.* The 1969 decree applied these duties to the county. *Id.* at 1426-27. "Therefore, the . . . Board . . . has an affirmative duty to solve the Redan High School overcrowding problem in such a way that it furthers desegregation and helps eliminate the effects of the previous dual school system." *Id.* at 1427. The court went on to state that in light of the county's affirmative duty to desegregate, it was error to hold that plaintiffs had to prove discriminatory intent. "Until the . . . System . . . achieves unitary status, official action that has the *effect* of perpetuating or reestablishing a dual school system violates the defendants' duty to desegregate." *Id.* (emphasis in the original).

The court of appeals thus remanded "for the district court to do what it expressly declined to do before: examine the segregative and desegregative effects of the defendants' actions." *Id.* The appellate command does not require the district court to select the most desegregative alternative. *Id.* "[T]he district court should study . . . alternative solutions to the overcrowding problem to find the solution that best solves the problem in light of the valid educational concerns and other practicalities voiced by the defendants if the system is attempting to achieve greater desegregation." *Id.* If progress on Redan II has mooted an injunction against its construciton, the court possibly could enjoin use of the facilities as planned. *Id.* Finally, the appellate court stated that some of the district court's findings argued in favor of defendants' plans, but that erroneous standards were used.

The court held a telephone conference with counsel for plaintiffs and defendants on July 3, 1985. The court requested that the parties comment as to the course of action to be taken in view of the remand. In its letter of July 12, 1985, defendants stated that the court should not receive additional evidence. At the trial, the parties had presented evidence of Redan II's effects, as well as that of plaintiffs' alternatives. Defendants therefore believed that the court should determine specifically the segregative effect of these alternatives.

Plaintiffs' letter of July 15, 1985 noted that Redan II is almost complete. Therefore, the court should determine how the school must be used. Plaintiffs offered two suggestions for the use of Redan II. The first was for an 8th grade school with students transferring across attendance zones. Its second option was for a 7th and 8th grade school. This plan also would require students from different zones to attend other schools.

Plaintiffs presented no evidence and little explanation of these options. It requested that defendants analyze the

alternatives. At that point, plaintiffs could respond to the analysis, and the court could rule on the alternatives.

After reviewing the above mentioned letters, the court decided that a hearing would be helpful. Accordingly, a hearing was held on August 23, 1985, with counsel for all parties present. Plaintiffs suggested that the court redraw attendance lines to conform with their new alternatives. They claimed that such action would provide a greater desegregative effect than defendants' proposal, because more schools would be included.

Defendants asserted that the court should reanalyze the record and compare their plan with plaintiffs' old alternatives. Additionally, they presented charts showing the percentages of black enrollment in the elementary and secondary schools covered by plaintiffs' proposals, as well as a comparison of the new proposals using fall 1984 actual enrollments. The charts showed that black enrollment is rising in every cited school. The comparison indicated that the plaintiffs' plans would increase black enrollment in Redan II to make it a majority black school.

Plaintiffs informed the court that they had prepared a more complete description of their plans. They requested some time to present their own analysis, which the court granted. Defendants were given an equal amount of time to respond. Additionally, defendants agreed to provide the court with the actual 1985 enrollment figures, which would be available around September 20, 1985. In answer to the court's question, plaintiffs averred that they agree to the accuracy of these numbers.

Plaintiffs filed a letter with a brief analysis of their plans.[1] Because plaintiffs had not filed a brief, defend-

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[1] Local Rule 215-2(b), NDGa., restricts letter communication to the court. In the instant case, both sides have been filing lettrs instead of motions or briefs. Therefore, the court puts the parties on notice that any further communication with the court should

ants informed the court that they were not going to respond. Defendants instead filed the actual 1985 figures. Plaintiffs have not replied to or commented upon these figures. Therefore, the court has before it the original evidence in the case, plaintiffs' brief description of its plans including its estimates of attendance, and defendants' charts as presented at the hearing and as updated in its September 24, 1985 submission.

Obviously, the court would prefer more information to evaluate the alternatives. Unfortunately, the court was not given this data, and thus must base its decision upon the information before it.

First, the court concludes that it must evaluate and compare defendants' plan and plaintiffs' new alternatives. The previously proposed plans assumed that Redan II would not be built. With its construction virtually complete, however, these plans lose their efficacy. Plaintiffs agree with this observation. Additionally, the Eleventh Circuit held that the district court on reconsideration need not enjoin the planned expansion of Redan High School if construction of the facilities has mooted such action. "[H]owever, the defendants will proceed at their own risk. One result could be the enjoined use of the facilities as planned." 755 F.2d at 1427. The progress of construction has mooted the option of enjoining the building of Redan II. Therefore, the court must consider whether defendants' plan should be enjoined in favor of plaintiffs' new alternatives.

As the court reads the Eleventh Circuit's mandate, the next step is to determine whether defendants considered integration in formulating their plan, and to "examine the segregative and desegregative effects of the defendants' actions." 755 F.2d at 1427. To complete this task,

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be my way of briefs or motions and not letters. Defendants may continue to file their annual reports with the court as they have done in the past.

the court can look to some of the evidence presented in the trial which discussed the effect of the Redan II plan. Defendants have supplemented the evidence with actual 1984 and 1985 enrollment figures.

The reason behind defendants' plan is overcrowding in the Redan attendance zone. No one disputes that Redan High School is overcrowded. Defendants' solution was to build Redan II as an 8th-9th grade facility. Plaintiffs concede that Redan II would relieve overcrowding, but allege that it merely was a means of keeping Redan majority white and surrounding districts majority black. They claim that Redan II's effect would be further segregation, not integration.

The evidence presented at trial demonstrates that defendants took desegregation into consideration when deciding upon the Redan II plan, and that their alternative does not have a segregative effect. Instead, it aids integration. First, it opens up space for M-to-M transfers to Redan, which previously had not existed. Dr. Armor, defendants' witness, testified that many black students in DeKalb County had sought M-to-M transfers to other white schools. He did not believe that Redan would be an exception. More integration within Redan thus would occur. Additionally, the M-to-M openings would attract black students from neighboring majority black schools, which would increase desegregation in those areas.

At trial, the evidence indicated that the Redan zone had a growing indigenous black population. The number of black children in that area's schools was predicted to rise and approximate the county wide school system's white/black ratio. At the time of trial the school system was 38% black. Currently, it is 40% black. Redan's black population is growing. The area is developing into a stable naturally integrating community. To tamper with it could well upset the racial balance.

Defendants' 1984 and 1985 enrollment figures validated its trial evidence. In 1984, the percentage of black

students in Redan High School rose from 16% to 17.1%. The 1985 figures showed an increase to 22.3%. These numbers bear out predictions of increased black growth in the Redan area. The growing black school population is indigenous, because no M-to-M transfers are possible.

Defendants also used the recent enrollment figures to calculate the proposal's effect on racial composition of Redan II. Under the plan without M-to-M transfers, the 1984 black percentage would be 19%; the 1985 percentage is 24%. With 100 M-to-Ms, blacks will make up 31% of the student body. Two hundred M-to-Ms would result in a 36% black population. Because the current black ratio of white to black children countywide is 60/40, the M-to-M transfers will move Redan closer to the ideal rate. Even without M-to-Ms, the growing indigenous black population will result in more of an ideal racial balance in Redan schools.

The court also has examined some effects of Redan II that could be considered segregative. Redan still will be a majority white school, and Southwest DeKalb and Towers will be majority black schools. This flaw is not fatal, however. The main effect of Redan II will be to alleviate overcrowding, to accommodate growing black school population, and to provide space for M-to-Ms. This in turn will further integrate these schools from which the M-to-M students come.

The evidence therefore indicates that defendants have considered Redan II's effect upon desegregation, and have included integration as an objective in their planning. Redan II will have an overall positive desegregative effect. It will not reestablish or perpetuate a dual school system. Therefore, the court moves on to the next step: the analysis of the parties' alternatives to the overcrowding to find the solution that best resolves the problem, taking into account valid educational concerns and practicalities. 755 F.2d at 1427. To perform this study, the court first will discuss plaintiffs' plans to ascertain whether they are

segregative or desegregative. Next, the court will compare the three plans to determine which will best rectify the overcrowding situation with desegregative effect.

Plaintiffs' first option would make Redan II an 8th grade school. Eighth graders from Redan, Towers, and Southwest DeKalb would transfer into the new school. Two hundred fifty Redan High students from the upper grades would go to Southwest DeKalb High, and 175 would attend Avondale High. The plan contemplates redrawing of attendance zone lines; plaintiffs, however, did not present the exact location of the new lines. This alternative would increase racial balance at the new school, relieve overcrowding at Towers and Redan, provide more racial balance at Southwest DeKalb, and retain the 9th-12th grade curriculum.[2]

A close look at the first option indicates that it probably would not achieve its desegregative purpose. Based on 1984 figures, plaintiffs estimated that 55% of the new school's population would be black. Defendants used the 1984 and 1985 enrollment figures to determine that the

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[2] Plaintiffs submitted the following list of schools impacted under the 8th grade plan:

	Before	8th Grade Plan
Towers High School	66% Black 64 over capacity	57% Black 76 under capacity
Southwest DeKalb High School	93% Black 100 under capacity	74% Black at capacity
Avondale High School	67% Black 168 under capacity	61% Black at capacity
Redan High School	21% Black 841 over capacity	21% Black at capacity

The court notes that plaintiffs have referred to Redan II as the Miller Grove School. For ease of reference, the court will continue to use the term Redan II.

percentage of black students in Redan II would be 56%. Thus Redan II, located in an area which has an indigenous growing black student population and is approaching the "ideal" racial mix, would be transformed into a majority black school. This plan would lower the black population in Towers and Southwest DeKalb, but these schools admittedly would remain majority black.

Another problem with plaintiffs' 8th grade option is the line redrawing. As stated earlier, plaintiffs did not illustrate their new attendance zones. The residential areas within Redan that are contiguous to Towers and Southwest DeKalb tend to be black. Redrawing Towers and Southwest DeKalb lines to include contiguous portions of Redan thus would add more blacks to the former zones. Additionally, Redan would become more white. Even a new district created from contiguous portions of the three zones would be majority black. This result surely does not further integration.

The only way to include white population centers within Towers and Southwest DeKalb would be to create non-contiguous districts. Such blatant gerrymandering would result in children having to travel past their old schools a greater distance to their new schools. Additionally, it would ruin the Redan area's natural desegregation process.

Another difficulty with plaintiffs' first option is the inclusion of Avondale for relief of Redan's overcrowding. As the court stated in its oral findings at trial, whether Avandole and Redan are contiguous is questionable. (Tr, Vol. V, at 825). The two zones touch each other only at one point. Children transferred from Avondale to Redan, and vice versa, would have to travel through the Towers district. As the court previously found, such a situation is untenable.

An additional concern is which high schools the Redan II students will attend. Plaintiffs did not specify whether

students would return to their original areas after 8th grade. If so, little will have been accomplished by plaintiffs' option except disruption.

The more likely plan would have these students attending Redan High School, as part of the new attendance zone. If this occurs, Redan High would become a majority black school. Plaintiffs' estimates and predictions do not take into account the growing number of indigenous blacks in the Redan area. Their plan would disrupt this natural desegregative tendency, a trend which experts agree is a good way to integrate. (*See, e.g.*, test. of Dr. Stolee, Tr, vol. II, at 190-91; test. of Dr. Armor, Tr, vol. III, at 388.)

Plaintiffs' 8th grade plan also would shut off M-to-M transfers into Redan. The 8th grade school would be majority black, thus preventing black students from transferring in. The high school would be majority white, at least at first, but at capacity. Dr. Armor estimated that numerous blacks would want to transfer into Redan, based upon the experience of other DeKalb schools.

Plaintiffs' estimates also do not provide for the phenomenon of "white flight." At trial, Dr. Armor described white flight in the school desegregation context as the failure of white students to attend the school to which they have been assigned manditorily. (Tr, vol. III, at 356-57). Referring to plaintiffs' original plans, Dr. Armor testified that from 25 to 50% of the white students whom the district transferred probably would not attend their new school. (Id. at 441-44). These figures were based upon studies conducted by Dr. Armor in other cities.

No estimates are available for plaintiffs' present alternatives, which were formulated after trial. Nonetheless, plaintiffs should have, but apparently did not, take into account the possibility of white flight. If it occurred at the rates predicted by Dr. Armor for the other plans, the desegregation value of plaintiffs' current op-

tions would be diminished. In summary, plaintiffs' 8th grade option may lead to greater segregation, and would block the natural integrated growth of the Redan area.[3]

Plaintiffs' second option is a 7th and 8th grade school including 7th grade students in the elementary schools of the following attendance zones: Rainbow, Fairington, Canby Lane, Woodridge, Redan (portion), and Mainstreet. Eighth grade students at Towers, Southwest DeKalb, Redan, and Lithonia High Schools also would attend Redan II. Additional, 175 Redan upper grade high school students would transfer into Avondale High and 133 would attend Southwest DeKalb High. This option would result in an integrated new school, relief from overcrowding at Rainbow, Mainstreet, and Redan Elementary Schools, and Towers, Lithonia, and Redan High Schools. Additionally, a special incentive grant from the State might be available.[4]

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[3] The court is uncertain how Redan High School would remain 21% black if Redan II is 56% black and would send its students to Redan High. Additionally, 425 children will go from Redan High to Southwest DeKalb and Avondale Highs. These children must be white to lower the latter schools' black population. Subtracting these students from Redan's white population will increase the proportion of blacks to whites, assuming that the number of black students remains constant. Therefore, plaintiffs' assertion that Redan High will remain 21% black after its plans are put into effect can be correct only if a proportionate number of black children leave Redan High.

[4] Plaintiffs presented the following list concerning the effect of their 7th-8th grade plan:

	Before	7-8th Grade Plan
Redan High School	21% Black 841 over capacity	21% Black at capacity
Southwest DeKalb High School	93% Black 100 under capacity	87% Black at capacity
Avondale High School	67% Black 168 under capacity	61% Black at capacity

[Continued]

Plaintiffs' second suggestion creates problems similar to their first option. The 1984 enrollment figures indicate that blacks would amount to 45% of Redan II's students. In 1985, black enrollment would rise to 47%. These figures would exceed the ideal county-wide balance. The projected continuing indigenous black growth could lead to a majority black school in a few years. This plan also would lower black proportions in surrounding areas. Yet, these other schools' basic racial composition would not be altered; they would remain majority black.

Plaintiffs attached a map which showed the proposed zone for 7th graders. The court is not certain whether the map indicates from where the 8th graders would come, or which Redan High students will transfer into other areas. The latter students apparently would have to be white to reduce Avondale's and Southwest DeKalb's

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[4] [Continued]

Towers High School	66% Black 64 over capacity	63% Black 24 over capacity
Lithonia High School	37% Black 231 over capacity	37% Black 190 over capacity
Rainbow Elementary School	97% Black 137 over capacity	
Fairington Elementary School	65% Black 81 under capacity	
Canby Lane Elementary School	93% Black 62 under capacity	
Woodridge Elementary School	17% Black at capacity	
Redan Elementary School	15% Black 329 over capacity	
Mainstreet Elementary School	18% Black 158 over capacity	

Plaintiffs have not yet supplemented their elementary school figures with 1985 enrollment data. The court therefore cannot determine how plaintiffs' plan will affect the racial composition of these schools.

black percentages. Thus they would have to come from areas of Redan which are not contiguous to the latter zones. As stated in the discussion of the 8th grade plan, such gerrymandering would result in children travelling past their old schools. As with the 8th grade plan, the inclusion of Avondale High also poses the problem of non-contiguous zone formation.

An additional drawback of the 7th and 8th grade plan is its inclusion of Lithonia, which all parties have conceded is a stable naturally integrated community. Its proportions of black students approximates the county-wide figure of 40% To include Lithonia would upset its racial balance.

As with plaintiff's first option, white flight could diminish severely the second plan's supposed integrative effect. Additionally, Redan II would be a majority white school, but just barely. Although it could accommodate M-to-M transfers, the areas's continued black growth indicates that soon Redan II will be a majority black school.[5] The 7th-8th grade plan would upset the Redan area's naturally occurring integration.

Plaintiffs' main argument is not so much that defendants' option is segregative, but that defendants should do more. In other words, defendants should use Redan's overcrowding to decrease black population at numerous other schools, some of which are contiguous. As the Eleventh Circuit noted, the court need not pick the most desegregative option available. 755 F.2d at 1427. After reviewing each alternative, however, the court concludes that defendants' plan provides more long term desegregative effect. Redan is becoming a naturally integrated community. The 1985 enrollment figures bear out Dr. Armor's predictions on this matter. Plaintiffs' options would disrupt that trend. In the words of Dr. Stolee, "if

[5] Which high school Redan II students will attend also is a question under this option. For an analysis of this subject, as well as of white flight and M-to-M, see the discussion *supra* at 10-13.

it ain't broke, don't fix it." (Tr. vol. II, at 190). (discussing Lithonia).

Plaintiffs' plans would increase the black populations of Redan II and the high school. These schools, along with Towers, Southwest DeKalb, and Avondale, would be majority black. The plans are not defined clearly. They do not account for possible white flight. M-to-M transfers would be lessened or eliminated.

In return for the problems caused by plaintiffs' plans, some surrounding schools will have a lower percentage of black students. This is a positive desegregative result. It is not enough, however, to override the negative implications of transforming Redan from a naturally integrating area into a majority black resegregated zone. This especially is true because the other schools will remain majority black.

Plaintiffs also protest that defendants' plan will place the burden of integration upon black students by way of the M-to-M program. A plan which depends upon voluntary desegregation has the advantages of allowing individuals to make their own choices and not to feel as though important decisions have been taken out of their hands and forced upon them. Obviously, if voluntary desegregation does not or cannot accomplish its goals, a mandatory plan will be necessary. In the instant case, defendants' plan, which is voluntary, accomplishes its desegregative objectives.

First, the court has determined on more than one occasion that recent racial school proportions are due to housing patterns rather than to a dual system. Second, voluntary desegregation by way of M-to-M transfers has worked well. Dr. Armor testified at trial that M-to-M transfers have increased the number of blacks at majority white schools in the county. He believed that the same pattern would be repeated in Redan. Defendants estimated that M-to-M transfers could increase Redan II's black population to as much as 36%. M-to-M trans-

fers also could provide space at the majority black schools for white M-to-M transferees.

Additionally, white flight may occur in a mandatory plan. Of course, the possibility of white flight is not enough to eliminate a desegregation plan. It should be considered, however, when comparing various alternatives. Plaintiffs did not take potential white flight into account. Thus, their calculations of the black percentages at Towers, Southwest DeKalb, and Avondale could be too low. Even without white flight, these schools still would be majority black under plaintiffs' plans. Finally, the Redan schools could be converted into majority black schools. This would ruin Redan's progress toward becoming a stable, naturally integrating community.

These factors demonstrate that defendants' plan of voluntary integration has a good chance of success. Conversely, the negative effects of plaintiffs' mandatory desegregation plans indicate that their alternatives will not promote integration as much as plaintiffs allege.

The defendants have acted in good faith to institute a solution to Redan's overcrowding that will increase integration. Therefore, plaintiffs' plan are not necessary: their integrative effect is no greater than, and actually is less than, that of defendants' alternative. Additionally, plaintiffs' options raise more valid educational concerns. First, they are more disruptive, involving the transfer of students who may not wish to attend another school. Second, defendants reject as educationally unsound the idea of placing 7th graders with students in the higher grades. A third factor is that defendants believe that separation of eighth and ninth graders from the upper classes would be beneficial. Although the court does not presume to set educational policy for the schools, defendants' educational concerns appear valid and reasonable.[6]

[6] Plaintiffs mention that the 7th-8th grade option possibly could garner state funds, but did not discuss this idea further. Defendants did not respond. Additional state funding could be a positive educational factor. Without more information, however, the court cannot determine the likelihood of such funding, or what its effect would be.

Additionally, plaintiffs noted that their plans would leave 9th-12th grade curricula intact. They did not point out why this would be beneficial. Assuming that it is, defendants have stated that separating 9th graders from older students also would have positive effects.

In summary, the court has analyzed the alternatives and has balanced them in light of their segregative and desegregative effects and valid educational concerns. The court finds that the long term effects of defendants' plan will be to increase desegregation, and that plaintiffs' plans will increase segregation in the long run. An important factor in this determination is Redan's apparent change into a more integrated community. Plaintiffs' plan would disrupt this transformation by making Redan High and Redan II into majority black schools. Finally, defendants have legitimate educational reasons for implementing their plan. On balance, defendants' alternative will foster integration and accommodate educational needs.

In the instant case, defendants have considered integration as an objective. As the court noted in its oral findings at trial, defendants should continue to take desegregation into account in its future school policy decisions. In this way, defendants can fullfill their mandate to solve school problems in a way that furthers desegregation. 755 F.2d at 1427.

The court denies plaintiff's request to enjoin implementation of defendants' plan.

IT IS SO ORDERED this 31st day of October, 1985.

/s/ William C. O'Kelley
WILLIAM C. O'KELLEY
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

(Caption Omitted in Printing)

ORDER

[Filed Nov. 7, 1986]

On November 5, 1986, the court held a conference to resolve several discovery disputes. Plaintiff asked the court for an extension of discovery time because his expert would not be available for defendant to depose until after the discovery period had lapsed. The court grants an extension of discovery time only for the purpose of allowing the parties to depose three experts: (1) Dr. Walberg; (2) Dr. Dantler; and (3) Dr. Cole. Defendants may depose Dr. Cole four weeks after they have made the material plaintiff requested available to him. Any discovery matters other than these three depositions must be concluded on November 15, 1986.

The parties may submit a proposed pretrial order one week before trial, if the trial is held on its currently scheduled date of January 20, 1987. Otherwise, the court will set both a new trial date and date for the pretrial order to be submitted.

As was anonunced at the conference, the following cut off times shall govern the most current information that may be presented at trial in the areas outlined below:

Information Area	School Term Cutoff Year
Student Testing	1985-86
Information on Students & Teachers	September, 1986
Demographic Data	1985

IT IS SO ORDERED, this 7th day of November, 1986.

/s/ William C. O'Kelley
WILLIAM C. O'KELLEY
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ALANTA DIVISION

(Caption Omitted in Printing)

ORDER

[Filed June 30, 1988]

The DeKalb County School System (DCSS) was historically segregated by law. "Dual" school systems were maintained in the County, one for black students and another for white students. In 1954, the Supreme Court's landmark decision in *Brown v. Board of Education*, 347 U.S. 483 (1954), signaled the end of dual systems with its pronouncement that "in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." *Id.* at 495. The Supreme Court's decision imposed upon all school systems, which were maintaining dual systems at that time, the duty to dismantle the dual system, avoid the reestablishment of the dual system, eliminate the vestiges of the dual system and replace the dual system with a system in which all students, regardless of their race, are provided the same educational opportunities.

In 1968, the plaintiffs, certain black school children in DeKalb County and their parents, filed this class action on behalf of all black school children in DeKalb County claiming that the defendants had operated a racially segregated school system in violation of the United States Constitution. After this action was filed, the DCSS voluntarily undertook to work with the Department of Health, Education and Welfare (HEW), to develop a final and terminal plan of desegregation. In June, 1969, the court

entered a consent order which approved the proposed plan and enjoined the defendants from discriminating on the basis of race in operating the DCSS. The court maintained jurisdiction over the case to implement its order. In the two decades that this case has been pending, the court has rarely been asked to intervene.[1] Both parties

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[1] There was no significant action in this case until September, 1975. At that time, plaintiffs sought to have the DCSS declared out of compliance with the 1969 order. Plaintiffs challenged the M-to-M program, assignment of staff, and changes in attendance zones. In 1976, the court entered an order requiring the DCSS to modify the M-to-M program to provide free transportation, to reassign faculty and staff to approximate the system-wide percentages, and created a Bi-racial Committee to oversee future boundary line changes, the M-to-M program, etc.

In 1977, the DCSS requested the court to approve a boundary line change for Flat Shoals Elementary School. After a hearing, the court held that the school's plan met constitutional standards and approved it.

In 1978, the DCSS filed a motion asking that kindergarten and special education programs be excluded from the M-to-M program. The court denied the motion.

In 1979, the DCSS, at the Bi-racial Committee's request, moved the court to amend its 1976 order to modify the M-to-M program, such that the only schools that would be eligible to receive transferring blacks would be those schools whose black populations did not exceed the system-wide percentage of black students. The Bi-racial Committee had suggested that such a limitation might help stop white flight from transitional schools and neighborhoods. The court denied modification of the order, finding that the transition of the southern schools was caused by the changing complexion of the neighborhoods, rather than the effect of the M-to-M program.

In 1983, the plaintiffs sought supplemental relief. Plaintiffs alleged that the DCSS had conspired to limit M-to-M transfers to Lakeside High School, that Knollwood Elementary School had been improperly expanded, and that Redan High School was also improperly increased. Plaintiffs later dropped their claim as it concerned Knollwood Elementary School. Separate hearings were held on the Lakeside and Redan issues. With regard to the Lakeside High School issue, the court ruled against the defendants. The court held for the defendants on the Redan issue. Although the court's first order on the Redan issue was reversed by the Eleventh

have worked together in the best interest of the school system.

On January 16, 1986, the defendants filed a motion for final dismissal. The defendants seek a declaration that the DCSS has achieved unitary status. When a federal court maintains jurisdiction over a school desegregation case, the school system must show that it is unitary before it can be dismissed from court supervision. *Green v. County School Board*, 391 U.S. 430, 439 (1968).

The meaning of unitary status has not been clearly defined by the Supreme Court. As there is no binding precedent in this circuit which articulates a precise definition for the term [2], this court will use the definition espoused by Judge Rogers in *Brown v. Board of Education* (Brown III), 671 F. Supp. 1290, 1292-93 (D. Kan. 1987), to determine whether the defendants have met their burden of proof. The following principles for determining unitary status were set forth in that case. First, "the nature of the desegregation remedy is to be determined by the nature and scope of the constitutional violation. *Milliken v. Bradley*, 433 U.S. 267, 280 (1977). No one plan can achieve unitary status in all school districts.

Circuit, the order issued by this court following remand also held for the defendants. The parties did not appeal that order.

[2] In Georgia State Conference of Branches of the NAACP v. Georgia, 775 F.2d 1403, 1413 n. 12 (11th Cir. 1985), the court noted "[s]ome confusion has been generated by the failure to adequately distinguish the definition of a "unitary" school system from that of a school district which has achieved "unitary status . . . . [A] unitary school system is one which has not operated segregated schools as proscribed by cases such as *Swann* and *Green* for a period of several years. A school system which has achieved unitary status is one that is not only unitary but has eliminated the vestiges of its prior discrimination and been adjudicated as such through the proper judicial procedures. Unfortunately, the terminology used to refer to these concepts is not universal."

The court also must be mindful that it is only segregation caused by the intentional segregative acts of the defendants that comprise the constitutional violation in this case. "De facto segregation (segregation caused by private choice) and segregation caused by authorities other than those sued in the case, are not part of the constitutional violation. . . ." *Brown III*, 671 F. Supp. at 1292 (citing *Keyes v. School District Number 1*, 413 U.S. 189 (1973); *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971)).

Because separate but equal schools violate the Constitution, the racial mix of students in a school is an important factor. The Court has emphasized on many occasions that while racial mix is important, racial balancing is not required. *E.g. Swann v. Board of Education*, 402 U.S. 1, 24 (1971). Even the existence of a small number of one race or virtually one race schools is not necessarily violative of the Constitution. *Id.* at 26.

In *Brown III*, Judge Rogers further recognized that "[s]egregative motive or the absence of such intent is relevant but not controlling in determining unitariness. 'The measure of the post-Brown I conduct of a school board under an unsatisfied duty to liquidate a dual system is the effectiveness, not the purpose, of the actions in decreasing or increasing the segregation caused by the dual system.' *Dayton II*, 443 U.S. at 538." *Brown III*, 671 F. Supp. at 1293.

In the *Brown III* opinion, Judge Rogers summarized by stating that a school system that has obtained unitary status is "one in which the characteristics of the 1954 dual system either do not exist or, if they exist, are not the result of past or present intentional segregative conduct of the defendants or their predecessors." *Id.* This court finds the definition of unitary status articulated by Judge Rogers to be the clearest and most serviceable definition of that term espoused by any court. It combines all of the essential requirements from the Supreme Court

opinions with a workable standard for a court to apply to the facts of a given case.

In *Green*, the Court delineated six pertinent areas that courts should examine in deciding whether a school system has met its burden of abolishing the former dual system. These areas include: student assignment, faculty, staff, transportation, extracurricular activities and facilities. The parties have requested that this court review one other area, quality of education, when determining if these defendants have met their burden of proof regarding whether the DCSS is now a unitary system. The court agrees that quality of education should properly be addressed.

The court held a hearing on the motion for final dismissal (or declaration of unitary status) on July 6-22, 1987. On November 22, 1987, after the parties had submitted their post-trial briefs and proposed findings of fact and conclusions of law, the court heard closing arguments on this motion. Earlier, plaintiffs filed motions for supplemental relief and to compel the DCSS to file a junior high plan. The court deferred ruling on those motions until it addressed the motion for final dismissal. All three motions are now ripe for decision.

STUDENT ASSIGNMENT

Much of the evidence submitted during the hearing on the motion for unitary status properly concerned student assignment. Indeed, the separation of the races is the primary indicator of a de jure segregated school system. Plaintiffs accurately stated that this court's duty, with regard to this issue, in their proposed findings of fact and conclusions of law at pages 54-55. Plaintiffs stated "[t]he court's task, in reviewing Defendants' progress in these areas, is to determine whether the remedies implemented by the Defendants have been effective in dismantling the old dual system. If they have, then the system should be declared unitary; if they have not, then

further relief must be ordered so that the duty to desegregate is fully and finally discharged. *Davis v. East Baton Rouge Parish School Board*, 721 F.2d 1425, 1434 (5th Cir. 1983); *Lee v. Macon County Board of Education*, 616 F.2d 805, 808-09 (5th Cir. 1980). See also *Swann v. Charlotte-Mecklenberg Board of Education*, 402 U.S. 1 (1971)."

DEFENDANTS' CONTENTIONS

The DCSS' position in this motion for unitary status is that it fulfilled its duty regarding student assignment in the 1969-70 school year when it closed the remaining de jure black schools and reassigned all students to their neighborhood schools under a bona fide neighborhood attendance plan. The DCSS argues that this action placed all students in the attendance zones they would have occupied in the absence of the constitutional violation. Although the DCSS concedes that the school system has undergone some resegregation since the implementation of the plan and the filing of the instant motion, the DCSS contends that shifting demographic factors and other factors beyond the DCSS's control caused this resegregation and that the DCSS is not legally responsible.

PLAINTIFFS' CONTENTIONS

Plaintiffs contend that the DCSS has the continuing duty to combat all resegregation until this court declares that the DCSS has achieved unitary status. Their goal was to produce evidence showing that the implementation of the 1969 order did not eradicate all of the vestiges of the prior dual system, and that the DCSS missed opportunities to fulfill its affirmative duty to eradicate all of the vestiges of the former dual system.

To support their argument that the implementation of the 1969 order did not desegregate the DCSS, plaintiffs asked the court to examine the resegregation that has occurred in the DCSS. Plaintiffs improperly place great

emphasis on the concept of racial balance[3]. Plaintiffs point to these 1986-87 school year statistics: (1) 47% of the students attending the DCSS are black; (2) 50% of the black students attended schools that were over 90% black; (3) 62% of all black students attended schools that had more than 20% more blacks than the system-wide average; (4) 27% of white[4] students attended schools that were more than 90% white; (5) 59% of the white students attended schools that had more than 20% more whites than the system-wide average; (6) of the 22 DeKalb County high schools, five have student populations that are more than 90% black, while five other schools have student populations that are more than 80% white; and (7) of the 74 elementary schools in the DCSS, 18 are over 90% black, while 10 are over 90% white.

Plaintiffs also contend that the DCSS missed opportunities to fulfill its duty regarding student assignments. Plaintiffs' primary evidence in this regard was the testimony of Dr. Robert Dentler[5] about the DCSS' failure to

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[3] In *Swann*, the Court emphasized that racial balance is not the test of an unitary system.

> If we were to read the holding of the District Court to require, as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved. . . . The constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole.

Swann, 402 U.S. at 24.

[4] For purposes of this order all white and minority students other than blacks will be referred to as whites. There was no evidence presented that at the time this action was instigated that non-black minority students composed even one percent of the student population of the DCSS. Thus, 94.4% of the students attending the DCSS in 1969-70 school year were white.

[5] Dr. Dentler was qualified as an expert in the areas of student assignment, educational administration, staff desegregation, program development and evaluation, specifically in the areas of desegregation, demographics, human relations and transportation. (Transcript Vol. IX at 12-13)

take advantage of certain desegregative tools: (1) the DCSS did not subdistrict, that is, the DCSS did not break this large county into subdistricts and racially balance all of the subdistricts; (2) the DCSS did not expend sufficient funds to target minority learning opportunities; (3) the DCSS did not put in place community advisory mechanisms bearing on equalization of treatment, other than the bi-racial committee that was established by the court; (4) the DCSS could have modified the old "freedom of choice" plan to use it for desegregative purposes; (5) the DCSS could have clustered schools, placing children at different grade levels in different schools; thus, establishing a feeder pattern; (6) the DCSS could have used magnet schools earlier than DCSS chose to use them; and (7) the DCSS could have used urban to suburban exchanges of students. (Transcript Vol. IX at 43-47)

While the DCSS had an affirmative duty to eradicate the vestiges of the former dual system during this period, it is undisputed that plaintiffs did not seek court intervention to require the DCSS to implement any of the desegregative tools described above. In fact, plaintiffs did not seek further judicial intervention in this case until 1975, long after plaintiffs claim that other desegregative tools should have been utilized by the DCSS. Even then, plaintiffs did not seek implementation of the changes that they now seek.

DISCUSSION

Prior to the 1966-67 school year, the DCSS maintained dual attendance zones for both blacks and whites. Beginning with the 1966-67 school year, DCSS replaced the dual zones with a system of geographic zones with a "freedom of choice" transfer plan. While this plan resulted in a number of black students attending de jure white schools, the system had no significant impact on

the former de jure black schools. The majority of black students still attended the de jure black schools. While neutral on its face, the "freedom of choice" plan did not dismantle the dual systems. In *Green v. County School Board*, 391 U.S. 430 (1968), the Supreme Court held that "in desegregating a dual system a plan utilizing 'freedom of choice' is not an end in itself. . . . Rather than further the dismantling of the dual system, the plan has operated simply to burden children and their parents with a responsibility which *Brown II* placed squarely on the School Board." *Id.* at 440-42.

Within two months of the Supreme Court's decision in *Green*, the plaintiffs filed this action. By order of June 12, 1969, the consent desegregation plan for DCSS was implemented. That order was designed to be a final and terminal plan for desegregation. The order abolished the "freedom of choice" plan and implemented a single neighborhood school attendance policy. All of the remaining de jure black schools from the previous dual system were closed. In 1969, the school population of DeKalb County consisted of 74,741 students of which 3,754, or 5.6% were black.

Plaintiffs concede that "the closing of the black schools in 1969 did, for a time, result in the desegregation of the schools of DeKalb County. . . ." (Plaintiffs' trial brief at 7) The court agrees with plaintiffs' concession. Plaintiffs further contend that the DCSS has become resegregated and that the defendants are responsible for that segregation. While the court agrees that the DCSS has become largely resegregated since the 1969-70 school year, the court does not find that the defendants are legally responsible for the resegregation.

Plaintiffs concede that the racial segregation in DeKalb County is the result of demographic shifts. In fact, plaintiffs' leading expert, Dr. Dentler, testified that "there were profound changes taking place demographically [from 1969 until 1986 in DeKalb County]." (Transcript

Vol. IX at 38) Plaintiffs' correctly contend that not "until all vestiges of the dual system are eradicated can demographic changes constitute legal cause for racial imbalance in the schools." *Lee v. Macon County Board of Education*, 616 F.2d 805, 810 (5th Cir. 1980) (citing *Flax v. Potts*, 464 F.2d 865 (5th Cir.), *cert. denied*, 409 U.S. 1007 (1972)). Plaintiffs seemingly further contend, however, that until the school system is declared unitary, not all vestiges of the former dual system will be eradicated. Such a contention, of course, is erroneous. It is axiomatic that all vestiges of a dual system must be eradicated at a point in time before the school system is declared to have unitary status or the school system must be declared to have achieved maximum possible desegregation.

It is clear that the simple act of implementing a constitutionally accepted plan does not make a school system desegregated. *United States v. Texas Education Agency*, 647 U.S. 504 (5th Cir. 1981) (Unit A), *cert. denied sub nom., South Park Independent School District v. United States*, 454 U.S. 1143 (1982) (citing *Henry v. Clarksdale Separate School District*, 579 F.2d 916, 921 (5th Cir. 1978)); *see Thompson v. Madison County Board of Education*, 496 F.2d 682 (5th Cir. 1974). At points in their briefs, the defendants seemingly make the argument that such an implementation does relieve the school system of its affirmative obligations. To the extent that the defendants arguments can be read as supporting this contention, the court rejects their arguments. This court is mindful of the Fifth Circuit's guidance in *Lemon v. Bossier Parish School Board*, 444 F.2d 1400 (5th Cir. 1971), that "'[o]ne swallow does not make a spring.'"

The court will now examine the evidence presented at trial concerning the vestiges of the former dual system after the desegregation order was implemented in this case. When the June, 1969 order was initiated, all children were assigned to their neighborhood school. As the

court noted above, plaintiffs concede that this action effectively desegregated the DCSS for a period of time. The evidence that plaintiffs presented at the hearing which tends to show that the implementation of the June, 1969 order did not effectively desegregate all of the schools for a time period was presented by Roger Mills. Mr. Mills has been involved with this case in several different capacities. His initial involvement was as a named plaintiff in 1974, he subsequently became involved as co-counsel, and later served as a member of the bi-racial committee. He testified that "there were two schools that were majority black despite the implementation of the court order. The first school was Terry Mill Elementary School which was 76 percent black, and the second school was Stoneview Elementary which was 51 percent black." (Transcript Vol. VII at 190)

The court will accept the witness' contentions regarding these schools, because plaintiffs' exhibit number 95, which contained the same information, was admitted into evidence. The court notes, however, that plaintiffs did not show that Mr. Mills had a basis for personal knowledge of the school system during the 1969-70 school year. Mr. Mills did not enter this case until 1974, and he testified that he moved into DeKalb County on January 1, 1974. (Transcript Vol. VII at 188).

The court has some concern that two of the formerly de jure schools were majority black at the time the desegregation plan for DeKalb County was implemented. The court views one race schools in the DCSS, both now and then, with suspicion. "The existence of a small number of one race, or virtually one-race, schools [however] within a district is not in and of itself the mark of a system that still practices segregation by law." *Swann*, 402 U.S. at 26. The court was presented with no evidence that these schools are a vestige of the dual system. The evidence presented at the hearing showed that demographic shifts in the Atlanta Metropolitan Area began

in the 1950s. In the 1950s, the population of DeKalb County was basically white; but as more and more blacks moved into the Atlanta Metropolitan Area, the rapidly growing black population began to move into the southwest DeKalb County area. The area surrounding Terry Mill School was one of the first areas to be effected by a rapid shift in the minority population.

Dr. David Armour testified about why Terry Mill was a majority black school at the time the desegregation plan was implemented in DeKalb County. Dr. Armour is an expert in the areas of the educational and social effects of desegregation plans, including academic achievement; the effects of demographics on school enrollment trends; the evaluation of alternative desegregation plans; the causes of residential segregation; assignment of faculty and staff in school desegregation plans; research methods and survey methods; and statistical analysis of data. Armour testified that in 1966 Terry Mill had only two black students, and 590 white students. By 1967, due to the population shifts of black residents from the City of Atlanta into DeKalb County, 23% or 140 out of 613 students at the school were black. In 1968, when the plan was adopted, the percentage of blacks and whites was equal. By 1969, when the plan was implemented, the percentage of black students at the school was 76%. (Transcript Vol. V at 120-21)

There was no evidence presented that the former dual system in any way contributed to the rapid racial transition of that school. Nor was there evidence that a formerly de jure black school was located within that area. Terry Mill was, of course, a formerly de jure white school. For these reasons, the court cannot find that the prior unconstitutional acts of the defendants were responsible for the high percentage of minority students in Terry Mill School in 1969.

The court is not as concerned with the racial imbalance in 1969 in the Stoneview Elementary School. The racial

mix at that school was practically 50-50. There was only one percent more black students in the school than white students. That mix represents perhaps the ideal racial integration situation. Practically equal numbers of black and white children attended school together. The court notes that, unlike the majority of the County, this area has been characterized as a stable integrated area since the inception of the integration plan. The racial mix of the same school in the 1986-87 school year, according to plaintiffs' evidence, was 53% black.

There was insufficient evidence presented to this court from which it can make a determination, as defendants urge, that the implementation of the 1969 order resulted in full eradication of the vestiges of the dual system that would entitle them to a declaration of unitary status on this issue. While the court is satisfied that the two majority black schools that were in place when the order took effect in the 1969-70 school year are not vestiges of defendants' prior unconstitutional conduct, there was insufficient evidence presented about how long the school system remained relatively desegregated before demographic changes had the effect of resegregating certain schools. There is considerable evidence that the defendants actions in 1969 resulted in elimination of most of the vestiges of segregation. The achievement of unitary status in the area of student assignment cannot be hedged on the attainment of such status for a brief moment. For this reason, the court finds it necessary to examine the actions of the DCSS over the last two decades.

HISTORY OF THE DEMOGRAPHIC CHANGES IN DEKALB COUNTY

A true understanding of the problems and successes of the DCSS cannot be found without an examination of the demographic changes experienced by DeKalb County in the period between 1969 and 1986. DeKalb County has experienced phenomenal growth since 1950. In 1950, the

County's population was a mere 77,0000. By 1985, the population was in excess of 450,000.

In 1970, there were 7,615 non-whites[6] living in the northern part of DeKalb County and 11,508 non-whites living in the southern part of the county. By 1980, there were 15,365 non-whites living in the northern part of DeKalb County and 87,583 non-whites living in the southern portion. Between 1975 and 1980, approximately 64,000 black citizens moved into southern DeKalb County, most moving from the City of Atlanta. Meanwhile, approximately 37,000 white residents moved from southern DeKalb County to surrounding counties, mostly Gwinnett County. While there was some growth of the white population in southern DeKalb County from 1950 until 1975, in northern DeKalb County, the number of whites grew tremendously during that period.

As the result of these demographic shifts, the population of the northern half of DeKalb County is now predominately white and the southern half of DeKalb County is predominately black. Evidence presented at the hearing indicates that racially stable neighborhoods are not likely because whites prefer a racial mix of 80% white and 20% black, while blacks prefer a racial 50%-50% mix. (Transcript Vol. V at 53) The demographic shifts have also had an immense effect on the racial compositions of the DeKalb County schools. From the period of 1976-1986, at the elementary level, the DCSS experienced an enrollment decline of 15%, and within this change, an increase in black student enrollments of 86%. At the high school level, during the same period, DCSS experienced an enrollment decline of 16%, while the number of black students rose by 119%.

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[6] In this context, the evidence presented to the court distinguished between whites and non-whites, that is, minority students including non-blacks.

STEPS TAKEN BY THE DCSS TO COMBAT DEMOGRAPHIC CHANGES

Since 1976, a bi-racial committee, appointed by the court, has reviewed all proposed boundary line changes, all proposed school openings and closings, and the M-to-M program. Since the implementation of court-ordered desegregation in this case, there have been approximately 170 boundary lines changes. Dr. William Clark, an expert in the areas of urban geography, demographic processes, statistics methodology, housing patterns and survey analysis, testified that the boundary line changes had no significant impact on the school populations, given the tremendous demographic shifts that were taking place at the same time. He opined that if no boundary lines had been changed, the shifting demographics still would have resulted in a significant increase in black population in many schools, especially those located in the southwest DeKalb area. Although the defendants' evidence showed that three boundary changes had at least a partial segregative effect, Dr. Clark testified, and this court finds, that even if a boundary change might have had a short-term effect on segregation, in the long run these boundary changes did not have a significant impact on the racial mix of the school populations. (Transcript Vol. I at 73-74)

To combat the shifting demographics, the DCSS voluntarily implemented a Minority-to-Majority program[7] in the 1972 school year. Using approximate numbers, 4,500 students of the 72,500 enrolled in the DCSS in the school year 1986-87 participated in that program. Participation has grown steadily in the program over the last decade at the rate of about 500 students per year. (Transcript Vol. V at 61) Dr. Armor testified that the impact of the M-to-

[7] The M-to-M transfer policy allows a student to transfer from a school in which his race was in the majority to one in which his race was in the minority.

M students goes far beyond the number of students transferring under the program. He testified that at the receiving school approximately two whites students for every black student is exposed to an integrated learning experience. (Transcript Vol. V at 61-62) Thus, approximately 19% of the students attending the DCSS had an integrated learning experience as a result of this program.

In the 1980s, the DCSS also instigated a magnet school program in schools located in the middle of the County. The location of these programs in the middle of the County is of critical importance for desegregative purposes. As was discussed above, the southern half of the County is predominately black, while the northern half of the County is predominately white. Only special academic programs located in schools in the middle of this rather large county have much potential for attracting both black and white students.

The magnet school program in effect at the time of the hearing include: a performing arts program at Avondale High School; the Scientific Tools and Techniques program at Fernbank Science Center; a science program for gifted and talented elementary children at Snapfinger Elementary School; a foreign language program at Briarcliff High School. At the hearing, Dr. Robert Freeman, Superintendent of the DCSS, testified that the DCSS also had plans to maintain programs at three other schools as magnet programs: the open campus located at Briarcliff; the Occupational Educational Center North; and the Occupational Educational Center Central. The DCSS has two other magnet programs on the drawing board: a school for the gifted and talented at Kittridge Elementary School and a program for four-year-olds at Evansdale Elementary School. The DCSS also operates a number of integrated experience programs: the writing center programs for both fifth and seventh graders that are racially controlled; the driving range school is racially controlled; summer school programs are racially controlled as much

as possible; and a racially controlled dialectical speech program was to be implemented in the 1987-88 school year.

HAS THE DCSS ACHIEVED MAXIMUM DESEGREGATION?

The court has examined the efforts that plaintiffs contend defendants should have taken to achieve unitary status in the area of student assignment, the steps that the DCSS has taken to accomplish their goal, the dynamics of the changing demographics, and the effects of the changing demographics on student attendance. With these factors in mind, the court must decide if the defendants have accomplished maximum practical desegregation of the DCSS or if the DCSS must still do more to fulfill their affirmative constitutional duty.

Most of plaintiffs' efforts to convince this court that defendants must do more to fulfill their constitutional duty centered on Dr. Dentler's testimony about what desegregative tools were at the defendants' disposal during the time that the resegregation of the County was taking place. Dr. Dentler summarized his testimony in this manner:

> [The DCSS] is racially imbalanced, it has schools that are extremely isolated racially, that continue to be identifiably black and identifiably white. It has failed to comply even in the broadest interpretation I could make with the single standard on certificated stat [sic]. It does not have a bi-racial committee which engaged [sic] in advising and guiding on desegregated strategies and race relations. It has an M-to-M program which has done about as much as it can do, which is very little, to desegregate the system. It has the barest bones beginnings of magnet programs, affecting in my count about 500 students at present, and there are some good ideas going, but they have a very long way to go, and they are in shortfall right now.

> So even on my briefest list, this district is segregated and has not offset the vestiges of discrimination as they impact on the child's daily learning experience, and that's the essence of the school treatment. It's not a unitary district, and its got some exciting good intentions which I have tried to note and honor, but . . . they don't bear on this assessment.

(Transcript Vol. IX at 123-124)

To rebut this evidence, the defendants presented the testimony of Dr. Christine Rossell, an expert in the areas of evaluation of alternative desegregation plans, the design and implementatin of desegregation plans, the effect of desegregation plans on learning, the effect of desegregation plans on demographics and statistical analysis of data. When asked whether she agreed with Dr. Dentler that the DCSS did not properly respond to the population shifts occurring during the 1970s and 1980s, Dr. Rossell testified:

> I am sure that [the DCSS] could have done something to make marginal adjustments, but these trends are so massive that [the DCSS] could only have had a marginal effect. The basic trend was racial transition, blacks moving from Atlanta into DeKalb County, and . . . there is nothing that would have changed that basic factor.

(Transcript Vol. XI at 85) When asked whether magnet schools would have worked in the mid-1970s, the period of time when Dr. Dentler advocates that such programs should have been started in the DCSS, Dr. Rossell testified that all studies available at that time, concerning the effectiveness of magnet programs, indicated that magnet programs were not very effective. (Transcript Vol. XI at 86-87).

To rebut Dr. Dentler's testimony that the M-to-M Program as implemented in the DCSS is ineffective, Dr. Rossell testified that, in 1987, the M-to-M transfers will reduce "racial imbalance by 18 percentage points if you

use the index of dissimilarity comparing blacks to non-blacks, by 20 percentage points if you use the relative exposure index comparing blacks to non-blacks. That is a fairly large reduction in racial imbalance." (Transcript Vol. XI at 87) Dr. Rossell further testified that the magnet programs and integrated learning experience programs implemented by the DCSS have had positive effects on desegration and racial exposure. (Transcript Vol. XI at 95).

Once again this court is faced with the "battle of the experts." The testimony of the opposing experts in this case is so contradictory that to accept the testimony of plaintiffs' experts necessitates that the court discredit most of the testimony of the defendants' experts, and vice-versa. Faced with this decision, the court finds the evidence presented by the defendants' experts to be more reliable on this issue. The defendants' experts were more familiar with the DCSS. They had spent more time than plaintiffs' experts in the DCSS, learning about the inner workings of the DCSS and its problems and successes, rather than treating the DCSS as a hypothetical situation. The court notes that Dr. Walberg, Dr. Armour, Dr. Rossell and Dr. Clark are leading experts in their respective fields and all have had considerable experience in the desegregation area.

Plaintiffs' desegregation expert, Dr. Dentler, did not base his testimony on an empirical study of the school system. Due to his lack of personal knowledge of the DCSS, he was forced to treat the DCSS as a hypothetical situation. Based upon data made available by the school system, his testimony centered on the failure of the DCSS to achieve racial balancing. The court found more compelling testimony about what is being and can be done to improve the quality of education for all students and achieve maximum practical desegregation at the same time.

Based upon the evidence presented at the hearing, the court finds that the DCSS has done everything that was reasonable under the circumstances to achieve maximum practical desegregation in DeKalb County. Plaintiffs request the court to go back in time and ask the question "what if the defendants had tried this then?" That time has passed. While there may be some case authority for approaching desegregation cases in that manner, this court will not dwell on what might have been, but what else should be done now. "At any time, more could have been done to achieve racial balance in the schools. But, it begs the issue of this case to argue that racial balancing must be done today because it was not done yesterday." *Brown III*, 671 F. Supp. at 1309.

Although the defendants might have been able to do something more to maintain desegregation while the dramatic population shifts were occurring, the court, based on the evidence presented at the hearing and the court's long involvement[8] in this case, finds that defendants' actions achieved maximum practical desegregation from 1969 to 1986. The rapid population shifts in DeKalb County were not caused by any action on the part of the DCSS. These demographic shifts were inevitable as the result of suburbanization, that is, work opportunities arising in DeKalb County as well as the City of Atlanta, which attracted blacks to DeKalb; the decline in the number of children born to white families during this period while the number of children born to black families did not decrease; blockbusting of formerly white neighborhoods leading to selling and buying of real estate in the DeKalb area on a highly dynamic basis; and the completion of Interstate 20, which made access from DeKalb County into the City of Atlanta much easier. (Transcript Vol. IX at 33) There is no evidence that the school system's previous unconstitutional conduct

[8] The undersigned was assigned to this case on January 8, 1981, approximately twelve years after its filing. Prior to that time, Judge Newell Edenfield supervised this case.

may have contributed to this segregation. This court is convinced that any further actions taken by defendants, while the actions might have made marginal adjustments in the population trends, would not have offset the factors that were described above and the same racial segregation would have occurred at approximately the same speed.

This court does not dismiss lightly plaintiffs allegations that the defendants could have done more to desegregate the DCSS. "The failure to take desegregative action by a district that had an affirmative duty to desegregate should be carefully examined by the court. If a district has consistently dragged its feet on desegregation then the vestiges of the segregated system may remain." *Brown III*, 671 F. Supp. at 1308. Although the plaintiffs, defendants, and the HEW all consented to the June, 1969 order implementing a race-neutral neighborhood school system, the Court later made it clear in *Swann* and *Green* that such plans would not satisfy the duty to desegregate unless it did effectively desegregate the system. Even though a student assignment plan may be racially neutral, unless the former vestiges have been removed, a race-neutral plan can perpetuate the former dual system.

To reiterate, this court finds that the implementation of the June, 1969 order eradicated most of the vestiges of the former dual system. Defendants' efforts to desegregate this system did not end there, however. When faced with rapid resegregation of the system, the DCSS implemented both a M-to-M program and a magnet program. Both of these programs were implemented without the prompting of this court or the plaintiffs. Both of these programs have achieved a degree of success in desegregation and racial exposure.

Although defendants did not implement all programs described as permissible in *Swann*, this court cannot find that it neglected its constitutional duty to eradicate the

vestiges of the former dual system. The great weight of the evidence indicates that the segregation that occurred in DeKalb County would have taken place at approximately the same speed whether or not defendants had implemented the desegregative tools described by plaintiffs. While racial mixture is a proper goal of a formerly segregated school system, there is no constitutional right for any student to attend a school having any particular degree or racial balance or mixing." *Milliken v. Bradley* (Milliken II), 433 U.S. 267, 280 n. 14 (1977); *Pasadena Board of Education v. Spangler*, 427 U.S. 424, 434 (1976). At this juncture, the court is convinced that, absent massive bussing, which is not considered as a viable option by either the parties or this court, the magnet school program and the M-to-M program, which the defendants voluntarily implemented and to which the defendants obviously are dedicated, are the most effective ways to deal with the effects on student attendance of the residential segregation existing in DeKalb County at this time.

Based upon the dramatic effect the implementation of the June, 1969 order had on eradicating the vestiges of the prior dual system, the DCSS' continuing efforts to battle resegregation by implementation of voluntary M-to-M and magnet school programs, the absence of any persuasive evidence indicating that the actions of the DCSS in any way promoted the resegregation that occurred in the County, and the evidence that indicates that other efforts by the DCSS would not have effectively stopped or even slowed the rapid demographic changes that brought residential segregation to the County, this court finds that the DCSS has achieved maximum practical desegregation as of the 1986-87 school year. The goal in desegregation cases is to achieve the "greatest possible degree of actual desegregation, taking into account the practicalities of the situation." *United States v. DeSoto Parish School Board*, 574 F.2d 804 (5th Cir. 1974), *cert. denied*, 439 U.S. 982 (1978). The DCSS

has become a system in which the characteristics of the 1954 dual system have been eradicated, or if they do exist, are not the result of past or present intentional segregative conduct by defendants or their predecessors. *Brown III*, 671 F. Supp. at 1293.

Plaintiffs argue that further desegregation may be accomplished by, *inter alia*, establishing a magnet school program or grade reorganization plan, such as a comprehensive junior high school plan. The court agrees with plaintiffs contentions in this regard. As the court discussed above, the defendants are obviously dedicated to the magnet program and the court does not find that court supervision is necessary to insure that magnet programs are used to bring about maximum practical desegregation.[9]

The court is concerned that the defendants are not seizing the opportunity of implementing a junior high program to bring about further desegregation, if possible. The parties agreed that in the area of student assignment, the cut-off date for evidence in this area would be the 1986-87 school year. All evidence presented to the court indicates that the DCSS obtained maximum practical desegregation through that cut-off date. Thus, the defendants have fulfilled their constitutional obligations in this area. For that reason, the court denies the motion of plaintiff to compel the defendants to file a junior high plan.

STAFF ASSIGNMENTS

The assignments of both teachers and principals have been challenged in this case as violative of the dictates of *Singleton v. Jackson Municipal Separate School District*,

[9] In the defendant's post-trial brief at page 36, defendants state: "[a]s the court heard, Defendants remain committed to providing all students the opportunity for an integrated education, and will continue to devote significant resources to the M-to-M program, integrated experience programs, and magnet programs with or without court supervision."

419 F.2d 1211 (5th Cir. 1969), *cert. denied*, 396 U.S. 1032 (1970). The court will first address the issue as it concerns teachers.

While the DCSS maintained a dual system, only black teachers were hired to teach black students in all-black schools, and only white teachers were hired to teach in the all-white schools. Of course, a segregated faculty is vestige of the former dual system, and all school systems that maintained a dual system have the affirmative duty to eradicate this vestige. As long as schools have faculties that are identifiably of one race, it is unlikely that the schools will be able to successfully assimilate students of another race.

Plaintiffs do not contend that the defendants have not fulfilled their constitutional obligation with respect to hiring and retaining minority faculty. The proper gauge of the defendants' conduct in respect to hiring minority teachers is the racial composition of a district's teacher work force as compared to the racial composition of the qualified public school teacher population in the relevant labor market. *Hazelwood School District v. United States*, 433 U.S. 299, 308 (1977); *Fort Bend Independent School District v. City of Stafford*, 651 F.2d 1133, 1137-38 (5th Cir. 1981) (Unit A). Plaintiffs concede that defendants have actively recruited qualified black applicants, and that the result of their efforts has allowed the defendants to hire a significant number of black teachers, even though the number of black students graduating from colleges in the United States with bachelor degrees in the field of education has declined since 1975 and is still decreasing. While the state-wide average percentage of black teachers within a school system was 21% in 1986, the DCSS percentage was 26.9%. In the last five years, the DCSS has continuously employed a greater percentage of black teachers, than was the state-wide average. The court notes that the DCSS has an equally exemplary record in retention of black teachers.

Plaintiffs do contend, however, that the defendants have not complied with one of *Singleton*'s requirements. *Singleton* pronounced three governing principles with respect to faculty employment practices during the desegregation process. Plaintiffs challenge only the first pronouncement, that is, plaintiffs contend that the defendants have failed to follow the requirement that "principals, teachers, teacher-aides and other staff who work directly with children at a school shall be so assigned that in no case will the racial composition of a staff indicate that a school is intended for Negro students or white students." *Id.* at 1217-18.[10] The court agrees that the defendants have not complied with *Singleton* with regard to assignment of minority faculty.

The court notes, that in 1976, while Judge Newell Edenfield supervised this case, the defendants were found to be out of compliance with the first *Singleton* requirement. In his order of November 3, 1976, Judge Edenfield made the following findings of fact and conclusions of law on this issue:

> The court finds that the defendants have not taken adequate steps to utilize reassignment of teachers to reduce the racial identifiability of faculty in accordance with the standard set out in *Singleton v. Jackson Municipal Separate School District*, *supra*. In *Singleton*, the Court of Appeals for the Fifth Circuit held that in order to reduce racial identifiability of a faculty, staff should be assigned so that the ratio of black to white teachers in each school is "substantially the same" as the ratio throughout the entire system. 419 F.2d at 1218.

[10] The other two requirements of *Singleton* follow. *Singleton* prohibits a school system from discriminating in the hiring, assignment, promotion, pay, demotion or dismissal of faculty members and staff. Finally, *Singleton* requires that in school districts in which the process of desegregation effects a reduction in the number of teachers or other professionals employed by the district, the school district must select the staff members to be dismissed or demoted on the basis of valid non-discriminatory reasons. 419 F.2d at 1218.

Defendants ask that the court compare the facts in the instant case with *Ellis v. Board of Public Instruction of Orange County*, 423 F.2d 203, 205 (5th Cir. 1970), where the court found the school system to be in compliance with *Singleton*, despite the existence of racial ratios in individual schools twelve percentage points higher than the racial ratio of the entire school system. While the court is aware of the problems inherent in requiring that the teachers at any school be maintained at an exact arbitrary racial ratio, [cite] the current 40-48% of black teachers in some of the more predominantly black elementary schools does not even "approximate" the 15% system-wide ratio [cite].

> A significant reason for the wide disparity in the racial ratios amongst schools in DeKalb County is the reliance on the replacement process, and the avoidance of reassignments to even out the distribution of faculty. The court finds that this system does not comply with the *Singleton* standard, nor with this court's 1969 order which required reassignment of teachers to eliminate the effects of the dual school system. Accordingly, reassignment of teachers must be utilized to make the racial ratio of the faculty in individual schools truly substantially similar to the system-wide ratio. [cite]

Order of November 3, 1976 at 15-16.

There was no evidence presented at the hearing that after Judge Edenfield issued the order referenced above that the defendants reassigned their teachers to make the racial ratio of the faculty in individual schools truly substantially similar to the system-wide ratio. All evidence indicates that the DCSS has continuously relied upon the replacement process to achieve *Singleton* re-

quirements and avoided using mandatory reassignment. The result of this policy is that defendants have never satisfied their duty to comply with *Singleton*.

Defendants argue that if the court views the system as a whole they have complied with *Singleton*. Defendants contend that plaintiffs improperly look at particular schools. Defendants obviously misread the requirement of *Singleton* in this regard. The pertinent language from that opinion follows:

> For the remainder of the 1969-70 school year the district shall assign the staff described above so that the ratio of Negro to white teachers *in each school*, and the ratio of other staff *in each*, are substantially the same as each such ratio is to the teachers and other staff, respectively, in the *entire school system*.

419 F.2d at 1218 (emphasis added). The proper focus for both the court and the parties are whether individual schools deviate substantially from the system-wide average.

Plaintiffs presented evidence that in the 1984-85 school year, seven schools deviated more than 10% from the system-wide average of 26.4% minority teachers in the elementary schools and 24.89% minority teachers in the high schools.

School	% Black Students	% Black Faculty	% Deviation
Briarlake Elem	17.1%	14.29%	−12%
Chapel Hill Elem	96.9%	38.89%	+12.5%
Gresham Park Elem	98.2%	39.29%	+13%
Kelley Lake Elem	98.7%	38.46%	+12%
Leslie Steele Elem	99.0%	37.04%	+11%
Wadsworth Elem	95.5%	47.83%	+21.5%
Gordon High	99.4%	39.22%	+14.4%

For the 1985-86 school year, the system-wide percentage teachers rose to 26.7% minority teachers in the elementary schools and 26.36% in the high schools. The evidence shows that the number of schools deviating more than 10% from the system-wide average rose also.

School	% Black Students	% Black Faculty	% Deviation
Briarlake Elem	18.9%	13.79%	−13%
Hightower Elem	18.2%	12.50%	−14%
Kingsley Elem	2.8%	16.67%	−10%
Medlock Elem	34.4%	15.79%	−11%
Chapel Hill Elem	97.5%	41.46%	+15%
Sky Haven Elem	98.0%	39.13%	+12.5%
Leslie Steele Elem	99.2%	39.29%	+12.5%
Wadsworth Elem	96.7%	41.67%	+15%
Gordon High	99.6%	39.58%	+13%
Walker High	99.0%	41.27%	+14.5%

In the 1986-87 school year, the numbers increased again. During that year 15 elementary schools and 2 high schools fell outside the 10% range. Again, the ratio of minority faculty rose, reaching 27.3% in the elementary schools and 25.95% in the high schools.

School	% Black Students	% Black Faculty	% Deviation
Hooper Alex. Elem	94.0%	37.5%	+10.2%
Austin Elem	1.1%	13.23%	−14%
Chapel Hill Elem	98.5%	39.53%	+12%
Gresham Park Elem	98.0%	43.75%	+15.5%
Hightower Elem	30.5%	15.0%	−12%
Kelley Lake Elem	98.8%	46.67%	+19.5%
Kingsley Elem	2.9%	15.38%	−12%
Meadowview Elem	82.4%	42.31%	+15%
Oakcliff Elem	14.9%	17.14%	−10.2%
Sky Haven Elem	97.3%	40.43%	+13%
Smoke Rise Elem	12.9%	13.51%	−14%
Leslie Steele Elem	99.6%	37.93%	+10.5%
Terry Mill Elem	98.4%	47.06%	+20%
Toney Elem	97.7%	38.46%	+11%
Wadsworth Elem	96.8%	40.0%	+13%
Columbia High	98.4%	36.0%	+10.1%
Redan High	33.2%	15.71%	−10.2%

Although the DCSS is not legally responsible for where black and white families chose to live in DeKalb County, the law of this circuit makes it legally responsible for the allocation of minority teachers. Defendant offers two excuses for its failure to achieve perfect *Singleton* compliance. First, defendant argues that competition among local school districts is very stiff and that it is difficult to attract and keep qualified teachers if the DCSS requires that the teachers work far from their homes. The former Fifth Circuit Court of Appeals rejected a similar argument in *United States v. DeSoto Parish School Board*, 574 F.2d 804 (5th Cir.), *cert. denied*, 439 U.S. 982. In *DeSoto*, the court said:

> Pointing to the difficulties DeSoto Parish faces in competing with nearby, wealthier school systems in attracting and keeping qualified teachers, the board asserts that measures such as reassignment to achieve compliance with *Singleton* will lead to large numbers of faculty resignations. The fear of faculty resistance to desegregation measures, like the fear of community resistance, cannot be allowed to defeat an effective desegregation plan in favor of a plan that is unlikely to achieve a unitary system.

Id. at 817. The court is not unsympathetic to the difficulties that the DCSS faces in this regard; however, the law of this circuit requires the DCSS to comply with *Singleton*'s requirements now.

The DCSS maintains a transfer program. Under this program, if a teacher has taught at the same school for a period of three years, the teacher may request a transfer to another school. (Defendants' exhibit 83) The predominant reason given by both black teachers and white teachers when requesting transfers is that they have a desire to work closer to their residence. This allows the teacher to coordinate classroom activities with community and civic activities and alleviates travel inconvenience. (Transcript Vol. II at 19-22) The court notes that since

DeKalb is such a large and densely populated county, the ability to work close to home can save an individual significant daily travel time. While the number of transfer requests received by the County is relatively high, the number of transfer request that are granted is relatively low.[11] Since the teachers requests are to transfer to schools near their home, however, the transfers that are granted deter the DCSS from achieving its *Singleton* goal.[12]

Plaintiffs further contend that the DCSS's placement of principals violates *Singleton*. Plaintiffs do not contend that the DCSS has failed to fulfill its constitutional obligation concerning the hiring and retention of minority administrators. As in the faculty area, the DCSS has an exemplary record in hiring and maintaining minority professional staff. Blacks now compose 26.5% of the administrative staff of the DCSS. Blacks are represented throughout all levels of the administrative structure of the DCSS.

Plaintiffs' concern about the assignment of principals is that principals are assigned in a manner such that the number of black principals at a school is a strong indica-

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[11] At the high school level in the 1986-87 school year, 79 requests were made. Seventy of the requests were made by white teachers, and 9 by black teachers. Of the 79 requests, 26 were granted, 24 to white teachers and 2 to black teachers. At the elementary level, 103 requests were made, of which 57 were granted, 40 to white teachers and 17 to black teachers.

[12] Defendants argue that they achieved *Singleton* compliance in every school at some point in time over the course of this case; therefore, it has been relieved of its constitutional burden. It would be ludicrous for this court to accept such an argument. Acceptance of compliance with *Singleton* under that argument, would permit situations such as a school system having 20% of its schools in compliance with *Singleton* during a particular year would achieve *Singleton* compliance even though the other 80% substantially deviated from the system-wide ratio, as long as the other 80% eventually complied with *Singleton*.

tion of the black student population of that school. The court must agree.

This court does not consider the evidence of principal assignments in a vacuum, however. In *United States v. South Park Independent School District*, 566 F.2d 1221 (5th Cir. 1978), *cert. denied*, 454 U.S. 1143 (1982), the court briefly considered the allegation of the plaintiff that principals were assigned based upon the race of the individuals involved. The court stated: "We are not ready to hold that each particular level of employment in a school system must have a particular racial composition. At the same time, however, we also recognize that in a community individuals might attach a certain degree of importance to the position of principal, and that it would be unconstitutional for a school district to assign principalships based upon the race of the individuals involved." *Id.* at 1226.

In *Singleton*, the court did not differentiate between teachers or principals, but required that all "staff who work directly with the children at school shall be so assigned that in no case will the racial composition of a staff indicate that a school is intended for Negro students or white students." *Singleton*, 419 F.2d at 1218. The principals and assistant principals are only two of the members of a schools staff that interact on a daily basis with the children. *Singleton* requires that the staff be considered as a whole. When the evidence concerning both teacher and principal deviations are considered, the need for further action by the defendants to comply with *Singleton* becomes obvious.

Construing the evidence presented by the parties concerning the assignments of principalships, the court finds the majority black schools have a high percentage of black principals assigned to them, while the majority white schools have a deficient percentage of black principals assigned to them. Plaintiffs' evidence focuses on the 1985-86 school year. There was no evidence presented that the 1985-86 school year was an anomaly. Plaintiffs showed that during the 1985-86 school year, five of the 22 high school principals, and 18 of the 74 elementary school principals were black. Of those black principals, four of the five black high school principals were assigned to schools that have student populations of over 95% black. Only one of the five high schools with black student populations over 90% had a white principal.[13] Thirteen of the 18 black elementary school principals were assigned to schools at which the black student population exceeded 90% black. Conversely, only four of the elementary schools with black student populations over 90% had a white principal. (Plaintiffs exhibit 3)

There is also an obvious racial skew in the total number of administrators (principals, assistant principals, lead teachers) at the majority black schools. The court will first examine the elementary schools during the 1985-86 school year. At this time the system-wide average of black administrators at the elementary school level was 30.1%. In the 43 majority white schools the number of black administrators were less than 10%. In the 11 schools in which the black student population ranged between 41% and 80%, the number of black administrators increased to approximately 38.5%. In the 20 schools in which the black student population was greater than 81%, the percentage of black administrators increased to 60%.

At the high school level, the racial skew of administrators was equally as startling. The system-wide average of black administrators at the high school level was 27.2%. In the 12 schools that were majority white, the percentage of black administrators was only approximately 22%. In the schools that had black student popu-

[13] Gyuri Nemeth, who testified during the July, 1987 hearing, is a white principal at majority black Walker High School (now McNair Senior High).

lations ranging from 41% to 80%, the percentage of black administrators was roughly 45%. In the majority black schools with black student populations of over 81%, the percentage of black administrators increased to 63.2%.

The court also analyzed an exhibit presented by defendants which depicted the race and sex of all in-school administrators for the 1987 school year. At the elementary school level, 27 out of the 77 elementary schools had black principals. In the 27 schools in which the principal was black, 60% of the in-school administrators were black. At the high school level, only four of the twenty-nine high schools had black principals. In those four schools, 75% of the in-school administrators were black.

Such obvious deviations between percentage of black administrators in the majority black schools cannot satisfy the *Singleton* requirements. Again the court rejects any contention by the defendants that if a particular school met the *Singleton* requirement at one time, the DCSS is relieved of the *Singleton* requirement as to that school. At a minimum, *Singleton* contemplates an initial reassignment of staff that will achieve a system-wide balance of minority staff and then a neutral maintenance program afterwards.

Defendants complain that this court has not given the DCSS guidance on what acceptable deviation from the system-wide average would comply with the *Singleton* requirement of "substantial compliance." This court has endeavored to be flexible by not setting a certain percentage deviation that will satisfy *Singleton* in this district. The court, however, will comply with the defendants request for guidance by establishing an iron-clad rule. This court will adopt as this rule the previous guidance established by Judge Edenfield in the November 3, 1976 order. When the school staffs (faculty and administrators) of all schools vary from the system-wide

minority staff average by no more than 15%, the DCSS will have obtained substantially compliance with *Singleton*. Any school that deviates by more than 15% will presumptively be a violation of *Singleton*. Absent extenuating circumstances justifying deviations of more than 15%, the court will not find *Singleton* compliance until all school staffs fall within the established parameters. At trial, the defendants did not offer an explanation for the existing substantial deviations.

This court will maintain jurisdiction over this case at least through September, 1988. Before that time period ends, the DCSS will have the option of implementing a plan that will achieve compliance with *Singleton* and submitting a report showing that they have so complied to the court. Due to the late date of this order, if compliance with *Singleton* within that short period of time will be unduly burdensome on the DCSS, the DCSS may file a report with this court in September, 1989 showing that it has achieved compliance with *Singleton*. It would appear that such compliance will necessitate reassignment of both teachers and principals.

While this court shares the concern of other courts of requiring strict mathematical ratios, as the former Fifth Circuit recognized in *DeSoto*, such ratios are necessary "as a starting point in eliminating the vestiges of segregation in . . . faculty assignment. . . . Moreover, *Singleton* does not require that such ratios be maintained permanently; rather, it 'contemplates an initial reassignment so that the racial ratio at every school reflects the system-wide ratio, followed by the utilization of a non-discriminatory hiring, firing, and assignment policy thereafter.'" *Desoto*, 574 F.2d at 819 (quoting *United States v. Wilcox County Board of Education*, 494 F.2d 575, 580 (5th Cir.), *cert. denied*, 419 U.S. 1031 (1974)). Achieving compliance with *Singleton* should not be difficult for the DCSS in the area of faculty assignments. In their brief, the defendants argue that any "school's fa-

culty could be brought into line with a narrowly construed racial balance standard by moving, at most, two or three teachers." (Defendants' post trial brief at 50)

PHYSICAL FACILITIES, TRANSPORTATION, & EXTRA-CURRICULAR ACTIVITIES

The defendants achievement of unitary status in the areas of physical facilities, transportation and extracurricular activities were not contested by the plaintiffs. The court agrees with plaintiffs' concession that the defendants have fulfilled their constitutional obligations in these areas and that no further relief is required.

Although the parties have stipulated that some clubs meet at certain receiving schools of the M-to-M program before the M-to-M buses arrive in the morning, plaintiffs do not contend that further relief is needed in the areas of transportation and extracurricular activities. It appears that this problem was brought to the courts attention to alert the court that the DCSS does not have a perfect record in the area of transportation and extracurricular activities. Transportation must be provided for M-to-M students. The activity buses provided by the DCSS are more than adequate to provide all students with an opportunity to participate in extracurricular activities. The time for the club meetings are set by the students not the DCSS. The DCSS provides activity buses late into the night, and will provide bus service for only one student, if necessary. The court finds that the DCSS provides opportunities to all students, including M-to-M students, to participate in a wide range of extracurricular activities without regard to race.

The plaintiffs also have some concern about overcrowding in the southern schools. Plaintiffs claim that portable classrooms are used more in the majority black schools than the majority white schools. All evidence at the hearing on this motion, indicated that the DCSS has a race-neutral policy with regard to the use of portable

classrooms. The DCSS is constantly attempting to deal with the growing population of southern DeKalb County by building new schools and adding permanent additions to existing schools.

QUALITY OF EDUCATION

The court considers this area of dispute to be of utmost importance. The crux of the Supreme Court's decision in *Brown* was that the maintenance of separate but equal facilities for black students did not assure that black children obtained a quality education. Although quality of education is not one of the six classic areas of inquiry in school desegregation cases [14], the defendants did not protest litigation of this area. The defendants achnowledge that a school system that is not fulfilling its obligation of providing quality education to all school children should not be entitled to unitary status.

The parties contest who should bear the burden of proof on this issue. As the defendants concede that this area of inquiry is important to a determination of whether the DCSS has achieved unitary status, the court finds that defendants should properly bear the burden of showing that all students in the DCSS are receiving a quality education.

Plaintiffs concede that the DCSS is a wonderfully innovative system.[15] (Transcript Vol. I at 101) Plaintiffs

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[14] Plaintiffs contend that quality of education can be considered a part of the facilities area, one of the six areas specified in *Green* as a proper area of inquiry for the purposes of deciding if a school system has obtained unitary status. The court finds that the labelling of the dispute concerning quality of education is irrelevant.

[15] The court was impressed by the number of innovative programs implemented by the DCSS. Examples of these innovative programs include: (1) effective schools program (a program initiated in 12 majority black schools to focus the resources of the school system on schools that will benefit most significantly); (2) parenting programs (providing parents with techniques and methodologies to

contend, however, that defendants have racially skewed the provision of certain education resources, such that black students are not given an equal educational opportunity in the DCSS. In particular, plaintiffs argue these tangible factors have been skewed: (1) teachers with advanced degrees; (2) more experienced teachers; (3) per pupil expenditure; (4) number of library books per student; and (5) that there is higher teacher turnover in the black schools. Plaintiffs seemingly argue that a prima facie showing that these resources are skewed is sufficient for the court to find that the DCSS has not achieved unitary status. Defendants, however, focus on the effect such factors have had on educational gains by black students. It is the defendants contention that the black students in the DCSS have made greater advances educationally than white students. The parties difference of opinion on what factors influence quality of education make it difficult for the court to compare the voluminous data presented on this issue. In effect, the parties compare apples and oranges and ask this court to decide which is better.

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help their children achieve in school); (3) lead teacher for student services (lead teachers work with individual students to improve their self-concept; they work with teachers to develop alternative strategies for working with children of various backgrounds; and they work with parents to help them facilitate the education of their children); (4) human relation supplements (a program instigated in the receiving schools of the M-to-M program, the goal of the program is to improve race relations); (5) homework helpline (provides immediate help for students and parents who are encountering difficulties in the completion of homework); (6) adopt-a-school (designed to use the resources of businesses to enhance education by encouraging companies to adopt a school and become its benefactor); (7) staff development programs; (8) latchkey program (in conjunction with the local YMCA, the DCSS provides a program for parents who cannot afford private day care services); (9) remedial education programs (e.g., a partially state-funded program for students in grades 2-5, who are half a year or more below grade level in reading); and (10) the writing-to-read program.

Both the allocation of educational resources and the achievement of students are interrelated issues that must be examined to determine whether black students are receiving the same quality education as white students. The court will first examine the evidence presented by the defendants concerning achievement of black students in the DCSS.

The focus of the DCSS evidence on this issue was that it offered the same educational opportunities to all students. The DCSS presented extensive evidence about the uniformity of its curriculum in all schools. The DCSS requires teachers to prepare lesson plans that conform to the curriculm. (Transcript Vol. VI at 85-91) Defendants' expert Dr. Walberg spent a considerable amount of time in the DCSS examining the curriculum and the conformity of the various schools to the curriculum. Based upon his examination of the DCSS, Dr. Walberg testified that "the District provides an exceptionally effective educational program. It provides a uniform curriculum, and it provides equality of educational opportunity in the schools. The District . . . provides continuous progress mastery learning. I think this is an exceptionally effective program. They do this by aligning the curriculum and the tests, by concentrating very heavily on academic learning. They use curriculum guides. They have in my opinion very careful lesson plans and extraordinary attention to the match of the total district curriculum to what the lesson plans are in fact. In most cases, although there are some exceptions to this, the teachers actually have those lesson plans in their classes and they are teaching them pretty much on task." (Transcript Vol. IV at 91)[16]

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[16] Plaintiffs attempted to prove that the curriculum of the predominately black schools was not the same as the predominately white schools by presenting the evidence of a M-to-M student, Norma Denise Jones, who testified that another transfer student did very poorly while he attended Lakeside High School through the M-to-M program, but when he transferred back to his home school

The court found particularly significant the evidence that black students who have been in the DCSS for two years achieve greater gains than white students on the Iowa Tests of Basic Skills (ITBS). The DCSS compared students who entered the DCSS in 1985 and took the ITBS for the first time in the 1985 school year then took the ITBS when it was administered in 1987. Although whites scored higher than blacks on the test, the percentage gain of black students was significantly greater than white students. The students who were selected for the comparison were 546 white students and 778 black students. In 1985, the average score for white students was 73.3%, while their score increased to 80.5% in 1987, a difference of 7.2%. For black students, the average score for the 1985 exam was 40.8% and their score increased to an average score of 51.2% in 1987, a difference of 10.4%. The fact that blacks score lower than whites cannot be attributed in any way to the DCSS. These students all entered the DCSS in 1985. The black students entering the schools system scored lower than entering white students. The progress of the black students and the white students can be attributed to the DCSS. It is significant to this court that black students, many of whom attend majority black schools made greater gains on this test than the white students, many of whom attended majority white schools. (Defendants' exhibit 114)

The latest results from the ITBS that were available before the hearing establish that both black and white students who have been totally educated in the DCSS score higher on the ITBS than students who entered the

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he did very well. Defendants successfully rebutted this testimony with the testimony of Melvin Johnson, the assistant superintendent for area one (an area in southern DeKalb County). Mr. Johnson testified that the transcript of the student in question showed that the students grades were substantially the same at both the M-to-M receiving school and the students' home school. (Transcript Vol. XI at 25-27)

DCSS in the year of the test. Again black students score lower on the ITBS as a group than white students. (Defendants' exhibit 115)

Blacks students in the DCSS also are more successful than other black students nationally on the Scholastic Aptitude Test (a college entrance examination test), while white students in the DCSS scored below the national average. The information on the SAT presented to the court was for the 1984-85 school year. (Defendants' exhibit 119)

The evidence presented to this court shows that the socio-economic status of a child affects his potential for academic success to a much greater extent than racial exposure. In fact, much of the evidence presented to this court showed that racial exposure did not effect a child's academic success. There was considerable testimony on that subject. (testimony of Walberg in unnumbered volume of the transcript at 40-62, and testimony of Dr. Rossell in Vol. XI at 99-100) The court found the evidence presented in this regard to be compelling.

Several of the defendants' exhibits illustrated this point as well. Defendants' exhibit 137 shows that black children entering kindergarten score much lower on the California Achievement Test than white students. Of course, only the child's home environment, including socio-economic factors, could bear on a child's achievement at that point in a child's academic development.

Both black and white students who are participants in the free and reduced lunch program score lower on the ITBS than students who are not on the free and reduced lunch program. (Defendants' exhibit 117) The type dwelling in which a child lives is predictive of scores on the ITBS. Children living in single family dwellings score highest, followed by children who live in condominiums,

duplexes, apartments, mobile homes, while children who live in institutions have the lowest scores. The exhibit further showed that a greater percentage of white students than black students live in single family dwellings and condominiums. (Defendants' exhibit 112)

Defendants' exhibit 110 shows that students who come from professional homes (that is, a home in which at least one parent is a professional) score highest on the ITBS. These students are followed by children from two-parent homes. The lowest achievers are from single-parent households. A much higher percentage of black children come from single-parent homes than white children.

The court will now consider the evidence presented by plaintiffs that certain of the resources of the DCSS are racially skewed. Plaintiffs presented evidence on these school treatment characteristics: (1) per pupil expenditure, (2) library books per student, (3) teacher experience; (4) teacher education; (5) teacher turnover; and (6) student retentions. Plaintiffs divided the schools into three different types for purposes of showing a comparison of the resources: (1) type I schools—schools that have been majority white over the last decade; (2) type II schools—schools that have undergone a racial transition from majority white to majority black over the last decade; and (3) type III schools—schools that have been majority black over the last decade. Plaintiffs then analyzed the data to determine if the differences were statistically significant. Under plaintiffs analysis, differences were considered statistically significant when there was less than a 5% probability that the pattern of data is happening by chance alone. (Transcript Vol. VIII at 12)

The plaintiffs presented the following data on teacher experience:

	Average Number of Years Teaching		
ELEMENTARY SCHOOLS	Fall 1984	Fall 1985	Fall 1986
Type I	9.55	10.22	9.79
Type II	6.45	6.90	6.36
Type III	5.24	5.46	5.19
HIGH SCHOOLS			
Type I	7.99	8.74	8.90
Type II	6.83	7.14	7.08
Type III	5.34	5.68	4.91

(Plaintiffs exhibits 97(a), (b) and c; 98(a), (b) and (c))

Using plaintiffs analysis, at the elementary level during both 1984 and 1985, all three types were statistically significant. In 1986, Type I differed significantly from Types II and III. At the high school level, Type I differed significantly from Type III for all three years.

With regard to graduate degrees held by the DCSS faculty during the 1986-87 school year, plaintiffs presented the following evidence:

Percentage of Teachers Having Graduate Degrees		
	ELEMENTARY SCHOOLS	HIGH SCHOOLS
Type I	75.76	76.05
Type II	61.84	64.34
Type III	52.63	64.32

(Plaintiffs' exhibit 86 at 13-14, exhibits 99 and 100) At the elementary level, all three types are statistically significant from each other. At the high school level, Type I differed significantly from Types II and III.

The court is, of course, concerned by the differences between teacher experience and teachers with graduate degrees in the different "type" schools. The defendants concede that there are differences and both attempt to explain the differences away and argue that the differences should not matter because they do not affect a stu-

dent's potential for academic success. While the court does not find convincing the plaintiffs evidence that such skews affect students' learning potential, the court finds that any school system should consciously make efforts to assure that resources are distributed equally to all students. This includes insuring that all students are taught by well-educated, experienced teachers. A previous dual system has an additional burden of assuring that any school predominately attended by minority students is given the same, if not superior, resources. All evidence submitted by the defendants shows that, due to socio-economic factors, a black student's potential for academic success is less than a white student's potential; thus, making their need for "resources" greater.

Whether a racial skew of resources affects a child's learning potential is irrelevant to this court. Even before the Supreme Court's decision in *Brown*, the law required that minority students be given the same resources as white students. Accordingly, when the defendants revise their assignments of teachers and principals to meet the requirements of *Singleton*, they shall make the assignments in a manner that will equalize the experience and education of faculty and staff among the different "types" of schools.

The plaintiffs presented evidence and the defendants concede that the degree of teacher turnover is higher in the Type II and III schools than in the Type I schools. (Plaintiffs exhibits 101 and 102) Defendants presented evidence that steps are being taken to control the teacher turnover in the majority black schools. The DCSS has instigated a program in the majority black Columbia, Gordon, and Walker High Schools that requires teachers to teach only four classes per day as opposed to five. This program led to a tremendous decrease in the turnover of teachers at these schools. (Transcript Vol. I at 177-78, Vol. V at 183).

The court applauds the efforts of the DCSS to maintain its experienced teachers. The DCSS, like any other school system, cannot control how many of its employees chose to leave the system to teach elsewhere or pursue other opportunities. For that reason, the court will not impose an obligation on the DCSS to slow teacher turnover in its majority black schools. The DCSS is obviously interested in this objective and will take all necessary steps without this court's intervention.

Plaintiffs also contend that the number of books per pupil in the DCSS is racially skewed among the "types" of schools. While there is a difference between the number of books in the "types" of schools, the court found the defendants explanation for this difference satisfactory. Several factors effect the number of library books in a particular school's library: (1) how often weeding (the removal of out-dated or duplicative material) occurs; (2) the shift of enrollment of a school (in the northern "type I" schools, population has decreased, while the southern "type II and type III" schools populations have increased); (3) how media resources are allocated by the media specialists of the different schools; and (4) the number of "lost" books at a particular school.

Defendants presented the testimony of Frank C. Winstead, the Director of Education Media for the DCSS, and Helen Ruffin, the Library Media Specialist at Sky Haven Elementary school, a majority black elementary school. (Transcript Vol. X at 175-200) The testimony of these witnesses convinced the court that any skew of library books is a result of the four factors listed above and was not the result of purposeful conduct by the defendants. The court also does not find that the number of books in a library is indicative of the quality of the media materials available at the school. There was insufficient evidence presented to this court to convince it that black students are in any way handicapped academically by the number of books per pupil in their school libraries.

Plaintiffs presented evidence that black students are not as academically successful on the California Achievement Test, have higher elementary failure rates, and are more often retained (not promoted) than white students. The defendants evidence showed the same results. Plaintiffs argue that their evidence proves that children assigned to majority black schools are denied equal educational opportunity. The court cannot accept this contention.

The parties do not dispute that black students, both in the DCSS and elsewhere, are not as successful generally in academics as white students. As the court discussed above, the court finds that socio-economic differences between the two groups influences academic success. The DCSS would not be acting in the best interest of black students by promoting them to a higher grade, until they have achieved a level of academic success that justifies the promotion.

Plaintiffs' arguments in this regard seem to hedge on the language of the June, 1969 order that required the DCSS to implement remedial educational programs for students attending or who have previously attended segregated schools to overcome past inadequacies in their education. (Order of June, 1969 at 11). It is undisputed that at the time of the unitary hearing, there were no children attending the DCSS who formerly attended a de jure black school before the implementation of the 1969 order. That order referred only to de jure segregated schools.

While there will always be something more that the DCSS can do to improve the chances for black students to achieve academic success, the court cannot find, as plaintiffs urge, that the DCSS has been negligent in its duties to implement programs to assist black students. The DCSS is a very innovative school system. It has implemented a number of programs to enrich the lives and enhance the academic potential of all students, both

blacks and whites. Many remedial programs are targeted in the majority black schools. Programs have been implemented to involve the parents and offset negative socio-economic factors.[17] If the DCSS has failed in any way in this regard, it is not because the school system has been negligent in its duties. Indeed, Dr. Edward Bouie, Sr., Associate Superintendent for Program Development and Staff Assessment, testified that the DCSS has implemented a total management system designed to focus on the achievement of children. He further testified that Dr. Freeman, the Superintendent of the DCSS, has instructed him that any program that can be found to improve student achievement, should be researched, piloted, and placed in the DCSS. (Transcript Vol. III at 41) The DCSS spends in excess of $12,500,000 of exclusively local funds on supplementary instructional personnel, such as contingency teachers, instructional lead teachers, lead teachers for student services, and remedial reading specialists. (Transcript Vol. III at 183-88) The court does not find that further court supervision is necessary to insure that the DCSS implements remedial programs to facilitate the potential for academic success by black students.

The last resource differential that the plaintiffs brought to this court's attention is that per pupil expenditures are higher in the Type I schools than in the Type II and III schools. This differential is of great concern to the court. In the 1984-85 school year, the expenditure per student in type I schools was $2,833, type II schools was $2,540, and type III schools was $2,492. Certain factors such as lower enrollment in the type I schools explains some of the difference in expenditures. While there was no compelling evidence presented that the amount of money expended per student results in a greater potential for academic achievement, this court is puzzled by the DCSS' practice of allocating what appears to be a larger per-

[17] See footnote 15, supra.

centage of its financial resources in the type I schools, when all evidence indicates that the needs of the type II and III schools are more significant. The DCSS shall endeavor to equalize spending among the three types of schools.

The defendants argue that this court cannot properly order relief in the quality of education area because the prior constitutional violation did not extend into this area. The court finds this contention to be without merit. A district court properly has broad discretion in desegregation cases to order relief that will facilitate the speedy eradication of all vestiges of the former dual system. Improving the quality of education for all children, especially black children, is the underlying purpose of all desegregation cases.

SUMMARY

The DCSS is an innovative school system that has travelled the often long road to unitary status almost to its end. While much of the court's order was spent on problems that still exist in the DCSS, the court has continuously been impressed by the successes of the DCSS and its dedication to providing a quality education for all students within that system. As Judge Edenfield recognized in his order of October 6, 1977 in this case: "Quality educational systems are a fragile blessing, as many metropolitan areas have learned to their sorrow. When one is found it should not be harassed out of existence to satisfy fractional technicalities."

The DCSS has eliminated most of the vestiges of the former dual system. The court finds that the DCSS is a unitary system with regard to the areas of student assignments, transportation, physical facilities, and extra-curricular activities. Before the court will declare that the DCSS has obtained unitary status, however, certain changes must be made. The DCSS shall have the option of either implementing a plan by September, 1988, or

implementing such a plan by September, 1989, to achieve *Singleton* compliance with regard to both teacher and principal assignments. The DCSS shall file a report with this court detailing the plan. This plan should also equalize the number of teachers with advanced degrees and more experienced teachers among the types of schools.

The DCSS shall attempt to equalize per pupil expenditures among the types of schools during the 1988-89 school year. Within two months of the end of the 1988-89 school year, the DCSS shall file a report with this court showing per pupil expenditures among the various schools. For purposes of this report, the schools shall be grouped in the same manner as plaintiffs grouped them for purposes of the hearing held on this motion.

In 1976, this court established a Bi-racial Committee to give guidance to the DeKalb County School Board regarding certain decisions. The court finds based upon the evidence presented during the hearing that there is no longer a need for the committee. Not only is there now a black school board member, but blacks are well represented throughout the administrative levels of the DCSS, including the position of assistant superintendant. Accordingly, the DeKalb County Bi-racial Committee is hereby abolished. The DeKalb County School Board, of course, may establish its own bi-racial committee.

The court denies the motion of defendants to dismiss. While the court is satisfied that the DCSS is a unitary system with regard to the areas of student assignments, transportation, physical facilities and extra-curricular activities and will order no further relief in those areas, the defendants must comply with the dictates above before this court will declare that the DCSS has obtained unitary status. The court grants in part the motion of plaintiff for supplemental relief and denies the motion to require the defendants to file a junior high plan.

IT IS SO ORDERED this 30th day of June, 1988.

/s/ William C. O'Kelley
WILLIAM C. O'KELLEY
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

(Caption Omitted in Printing)

ORDER

[Filed Aug. 11, 1988]

Presently before the court for consideration in the above-styled case is the motion of plaintiffs for reconsideration. In that motion, plaintiffs seek reconsideration of the court's order of June 30, 1988 as it concerns the court's determination that defendants have achieved fully unitary status in the area of student assignment and to the extent that the court denied plaintiffs' motion to require defendants to file a junior high plan.

In the motion for reconsideration as it concerns plaintiffs' allegation that the court erred in finding that the defendants have achieved fully unitary status, plaintiffs reiterate the same arguments they raised in opposition to the defendants' motion for final dismissal. The court did not misunderstand the evidence presented during the trial as plaintiffs seemingly presume. The court's findings and reasoning underlying those findings in regard to this issue are fully set forth in pages 20-28 of the June 30, 1988 order. The court will not again address the arguments raised by plaintiffs. Accordingly, the court denies the motion of plaintiffs as it concerns the issue of whether the court erred in determining that the defendants have fully achieved unitary status in the area of student assignment.

The court further denies the motion of plaintiffs as it concerns the court's denial of plaintiffs' motion to require the defendants to file a junior high plan. The parties agreed that all evidence concerning whether the defendants had fulfilled their obligations in the area of student assignment would be limited to school years prior to and including the 1986-87 school year. The court approved this agreement.

Based upon the evidence presented to the court concerning that time period, the court found that the defendants had achieved unitary status in that area. While this cut-off date may have made the presentation and analysis of evidence convenient for the parties, the court was limited to that time period when determining whether the defendants had met their burden in regard to student assignments. There will always be something that the Dekalb County School System can do to further desegregation. Plaintiffs agreed that the cut-off date for unitary status in the area of student assignment would be the 1986-87 school year. Plaintiffs are now bound by that decision as are the defendants. The court finds that court supervision of this area ended with the entry of the June 30, 1988 order which found that defendants had achieved maximum practical desegregation through the cut-off date. *See Pasadena Board of Education v. Spangler*, 427 U.S. 424 (1976); *United States v. Overton*, 834 F.2d 1171 (5th Cir. 1987); *Morgan v. Nucci*, 831 F.2d 313 (1st Cir. 1987).

For the reasons outlined above, the court denies the motion of plaintiffs for reconsideration.

IT IS SO ORDERED this 11th day of August, 1988.

/s/ William C. O'Kelley
WILLIAM C. O'KELLEY
United States District Judge

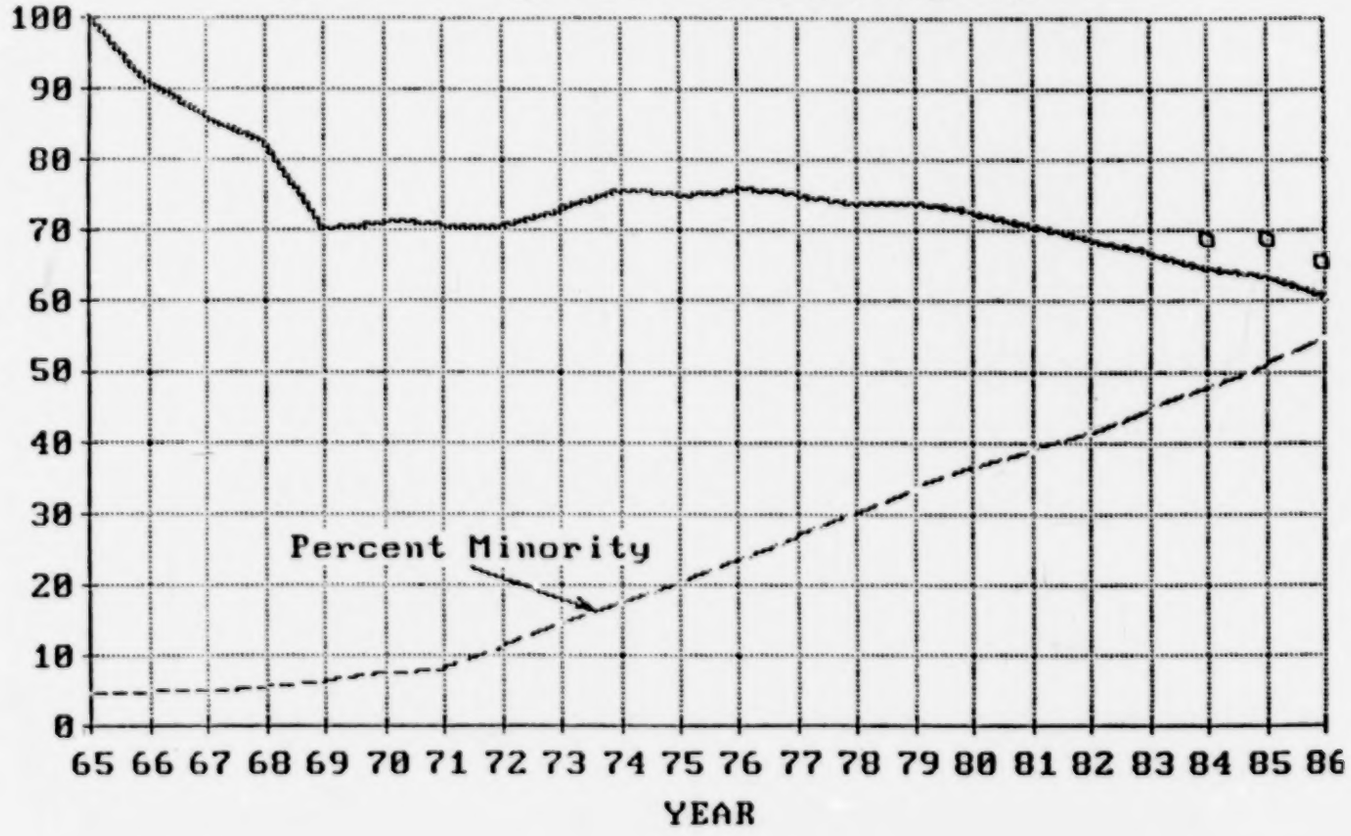
DEFENDANT'S EXHIBIT 2

DEKALB DESEGREGATION INDICES BASED ON ACTUAL ENROLLMENT DATA

	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986
TOTAL ENROLLMENT																						
Elementary	47224	45000	47667	49235	47727	49409	51864	51512	50786	50084	47724	47863	47470	47443	45884	44513	42427	41010	38767	38366	39302	41573
High School	25145	25102	27032	28730	31006	32121	33588	33654	33946	34767	34802	35083	35328	34858	33641	32301	31303	30687	30650	30927	30076	30061
All Schools	72369	70602	74699	79659	78733	81530	85452	85166	84732	84851	82526	82946	82798	82301	79525	76814	73730	71697	69417	69293	69378	71634
PERCENT MINORITY																						
Elementary	4.8	5.1	5.1	5.8	6.4	7.5	8.2	11.3	14.6	17.5	20.4	23.7	27.0	30.3	33.7	36.8	39.2	41.4	44.8	47.8	51.2	54.9
High School	4.5	4.8	4.6	4.9	4.9	5.4	6.3	7.9	10.3	12.5	14.6	16.9	20.0	23.3	26.9	30.4	33.3	35.7	37.9	40.7	43.7	47.7
All Schools	4.7	5.0	4.9	5.5	5.8	6.7	7.4	9.9	12.9	15.5	18.0	20.8	24.0	27.3	30.8	34.1	36.7	39.0	41.7	44.7	48.0	51.9
DISSIMILARITY																						
Elementary	100.0	90.7	85.8	82.3	70.1	71.0	70.5	70.6	72.9	75.4	74.7	75.7	74.8	73.6	73.7	72.3	70.3	68.3	66.7	64.5	63.4	60.3
High School	100.0	85.6	68.2	60.8	51.6	52.6	53.6	56.8	64.8	68.2	70.0	71.4	70.0	67.3	67.6	67.6	67.3	63.8	62.3	59.5	55.0	47.4
All Schools	100.0	88.9	79.7	74.9	63.6	65.2	64.9	65.6	70.1	72.8	72.9	74.0	72.9	71.2	71.3	70.3	69.0	66.5	65.0	62.7	60.3	55.6
ABSOLUTE EXPOSURE																						
Elementary	0.0	13.8	28.3	35.5	66.5	57.2	51.1	44.6	39.5	34.4	31.2	27.9	26.0	26.6	25.2	24.6	24.9	25.4	25.4	25.7	25.2	25.2
High School	0.0	16.7	38.6	59.7	85.2	83.0	76.5	64.7	53.8	47.0	42.7	38.5	36.1	35.3	34.4	33.1	32.0	32.5	32.5	32.4	32.9	34.2
All Schools	0.0	14.8	31.8	43.6	72.8	65.4	59.6	50.9	44.1	38.6	35.1	31.5	29.6	29.7	28.6	27.8	27.6	28.2	28.2	28.4	28.2	28.7
RELATIVE EXPOSURE																						
Elementary	100.0	85.4	70.2	62.3	28.9	38.1	44.4	49.8	53.8	58.3	60.8	63.5	64.5	61.9	62.0	61.1	59.1	56.7	54.0	50.7	48.4	44.1
High School	100.0	82.4	59.6	37.2	10.4	12.2	18.3	29.8	40.0	46.2	50.0	53.6	54.9	54.0	52.9	52.4	52.0	49.4	47.7	45.4	41.6	34.6
All Schools	100.0	84.4	66.6	53.9	22.7	29.9	35.6	43.5	49.4	54.3	57.2	60.2	61.1	59.1	58.7	57.8	56.3	53.8	51.5	48.6	45.8	40.4

DEKALB SCHOOL DESEGREGATION INDICES

Dissimilarity Index: Elementary Schools



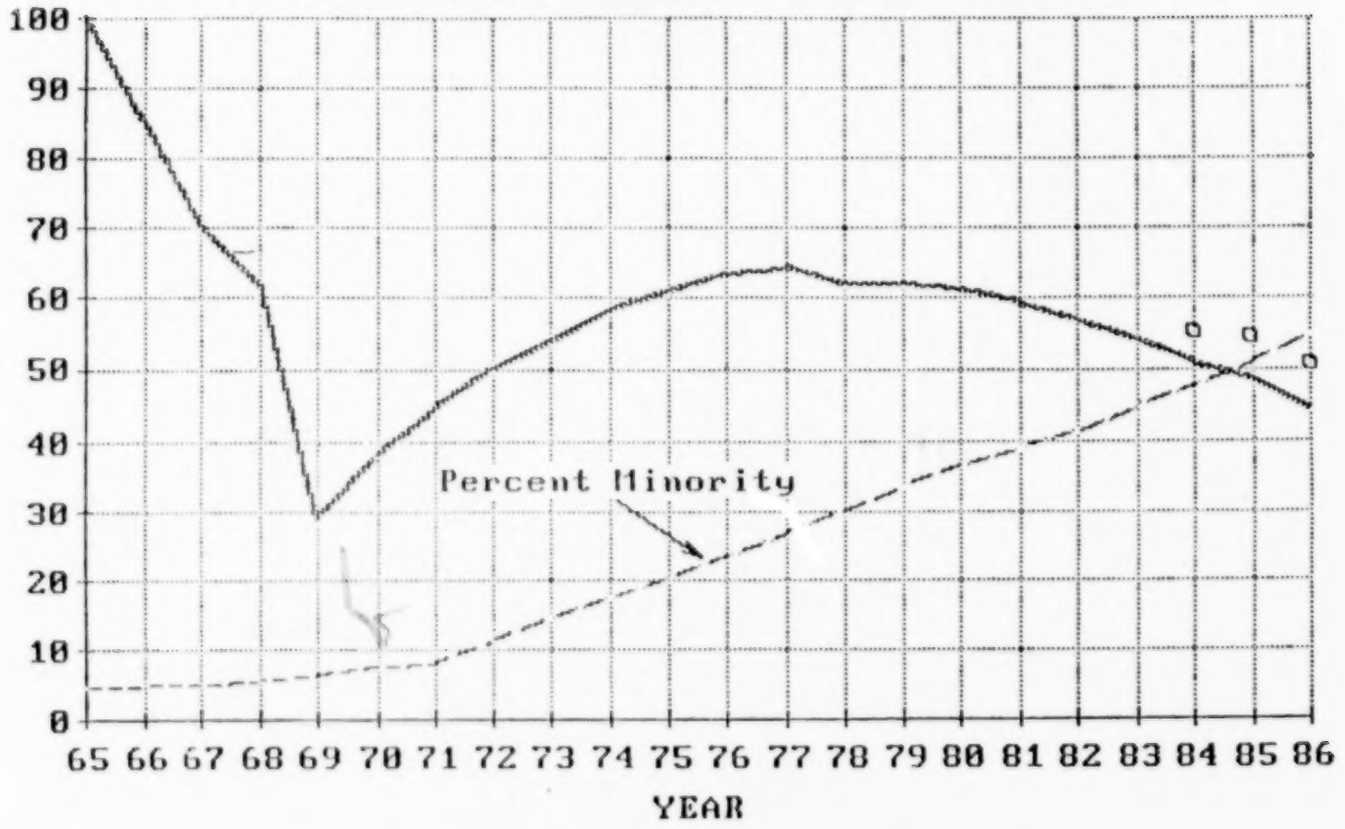
(o denotes index value if M–M students returned to their home school)

DEFENDANT'S EXHIBIT 4

256

DEKALB SCHOOL DESEGREGATION INDICES

Relative Exposure Index: Elementary Schools



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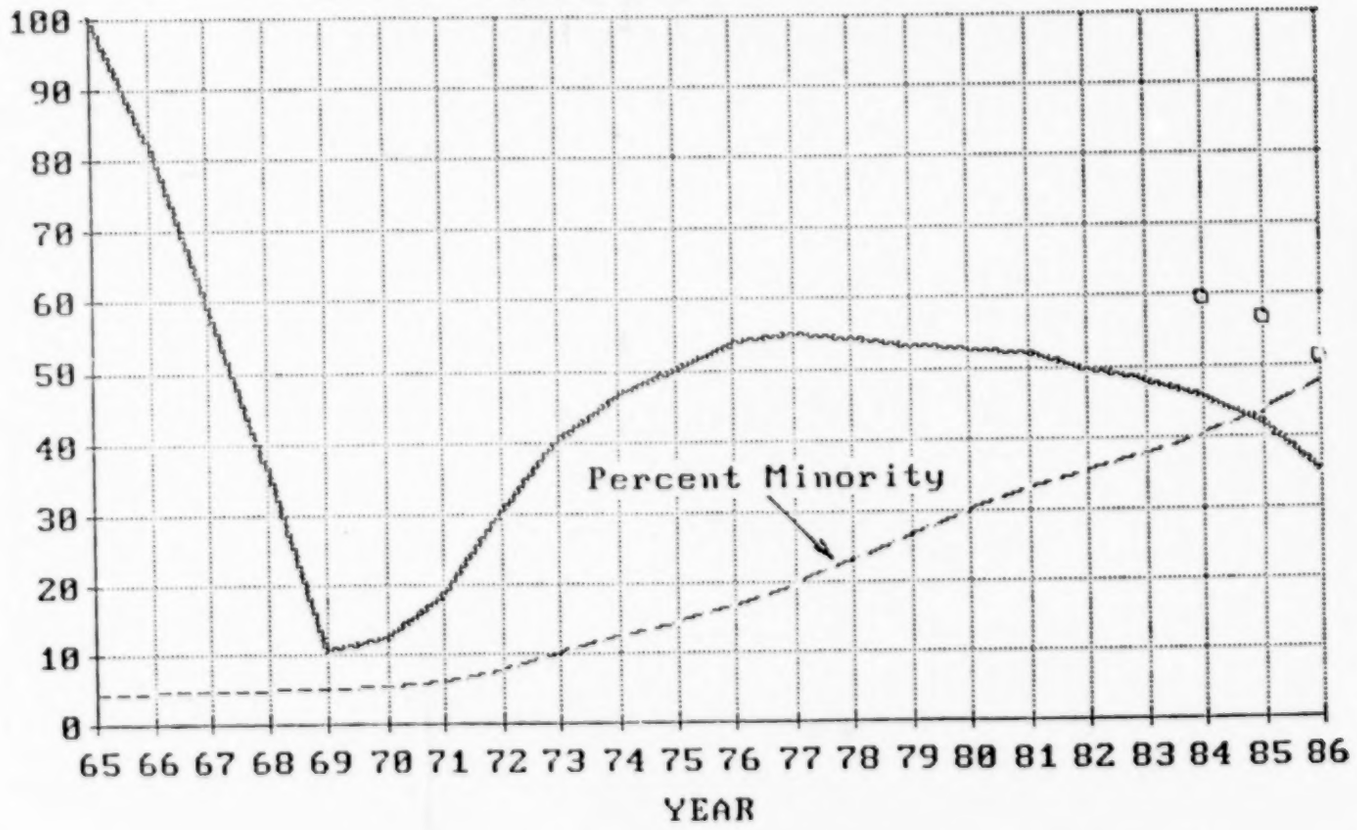
DEFENDANT'S EXHIBIT 5

257

DEKALB SCHOOL DESEGREGATION INDICES

Relative Exposure Index: High Schools



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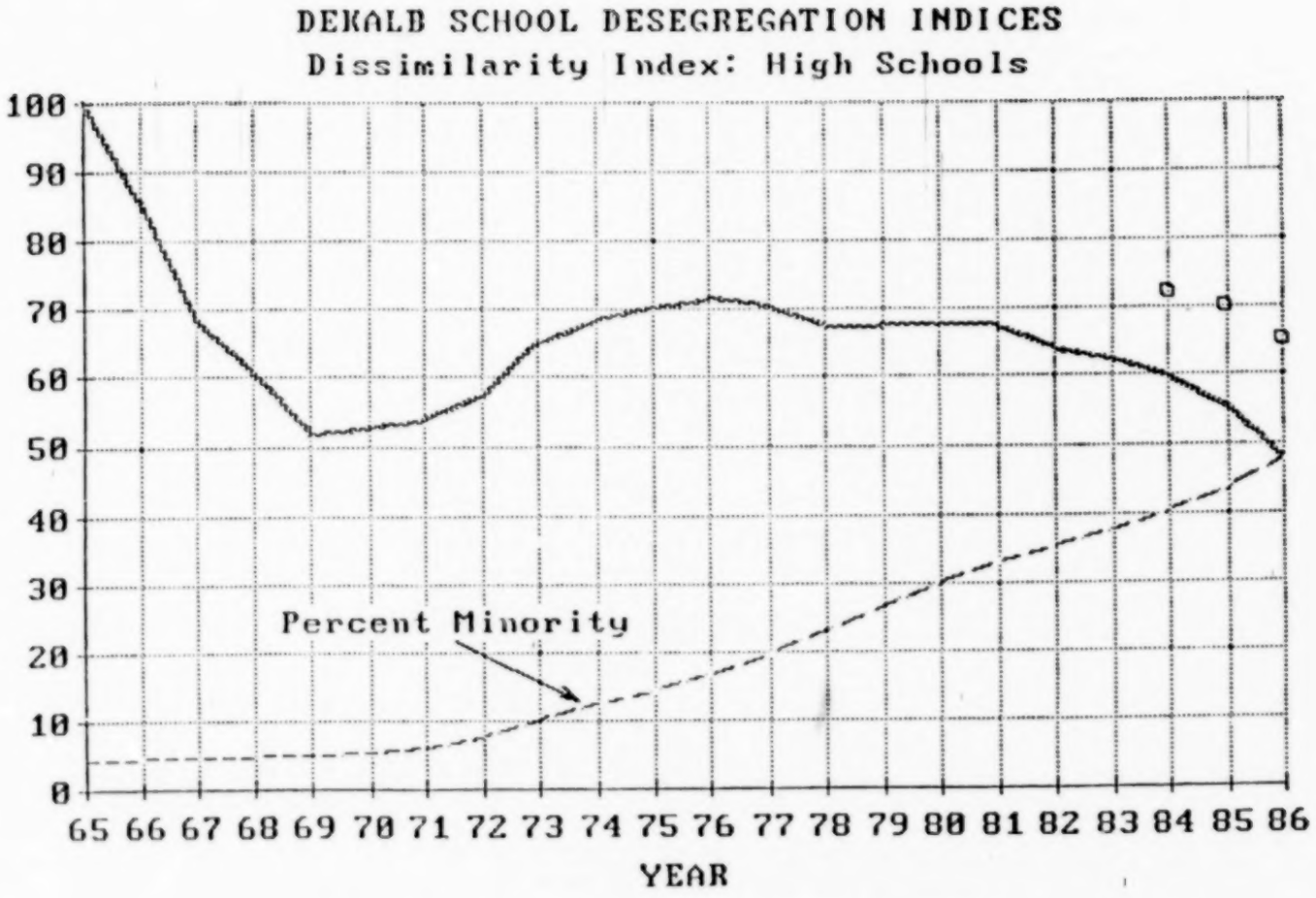
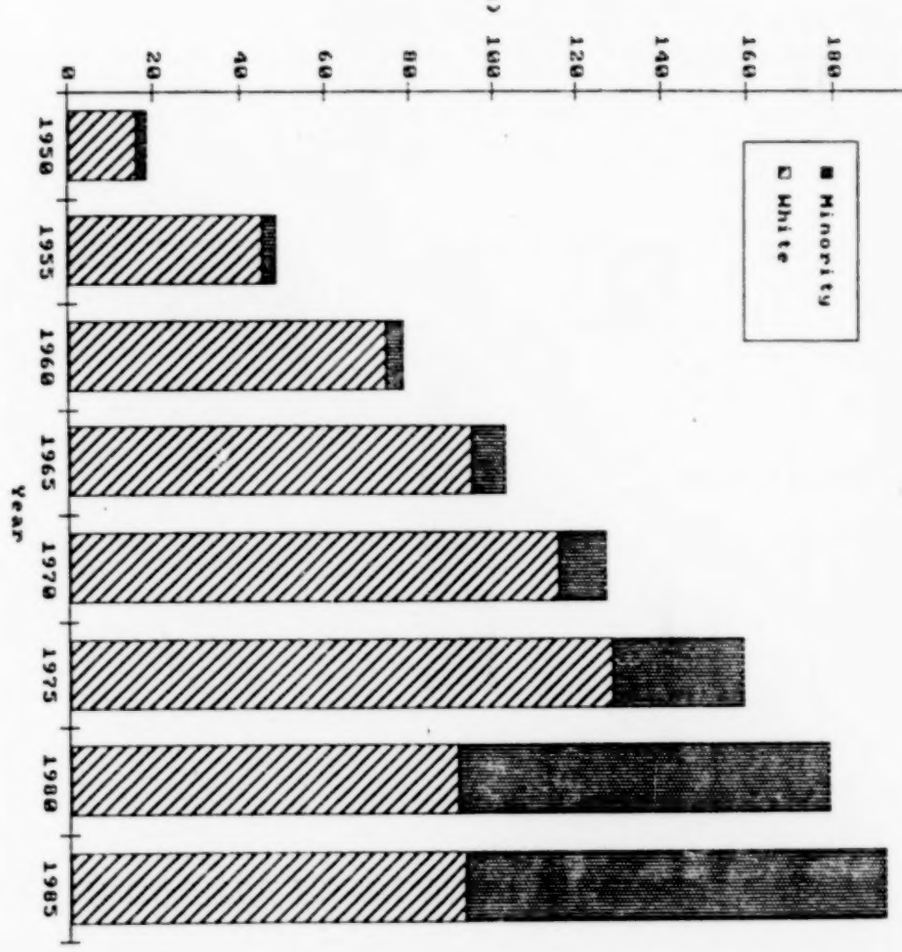
DEFENDANT'S EXHIBIT 6

258



DEFENDANT'S EXHIBIT 11

259



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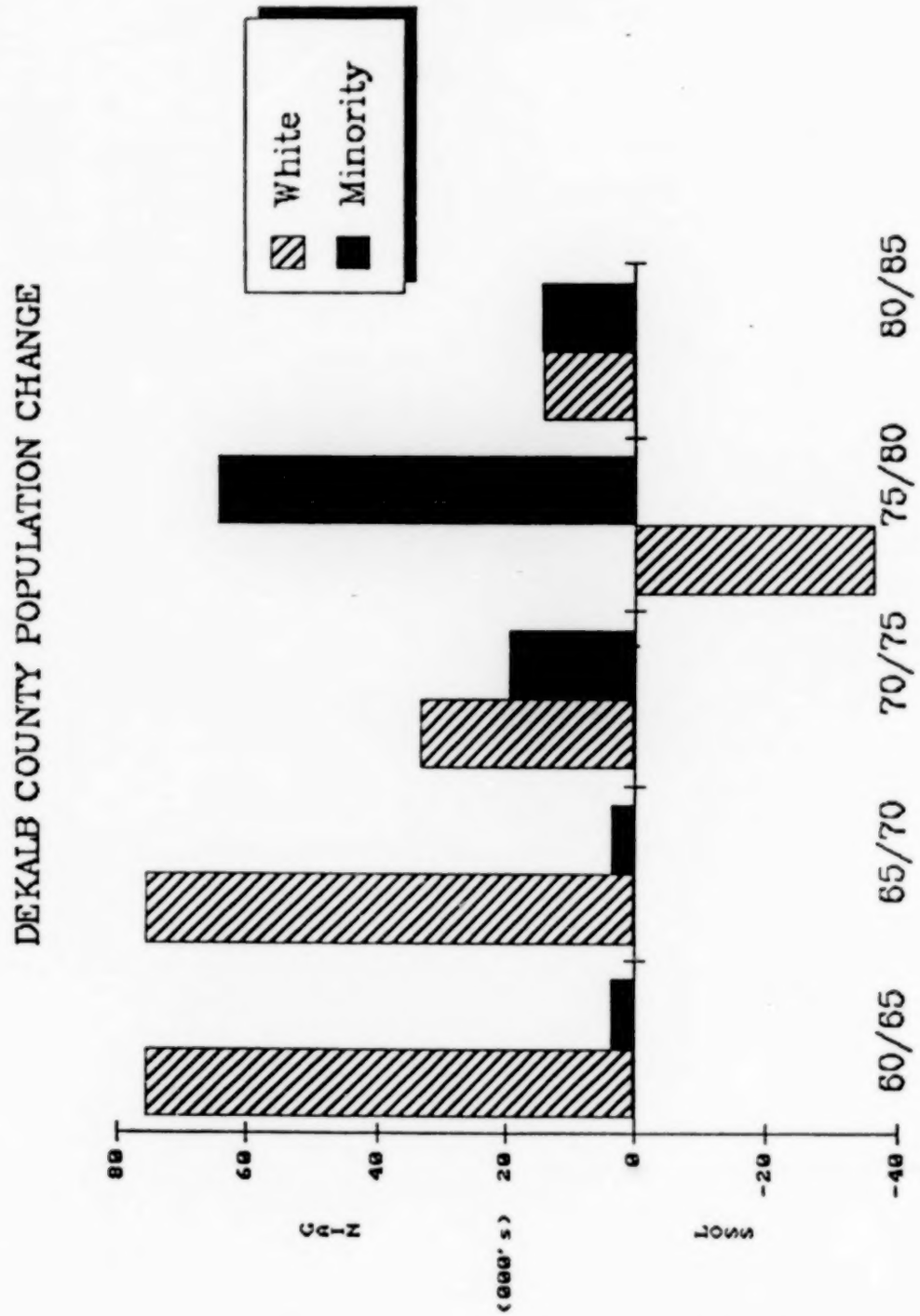

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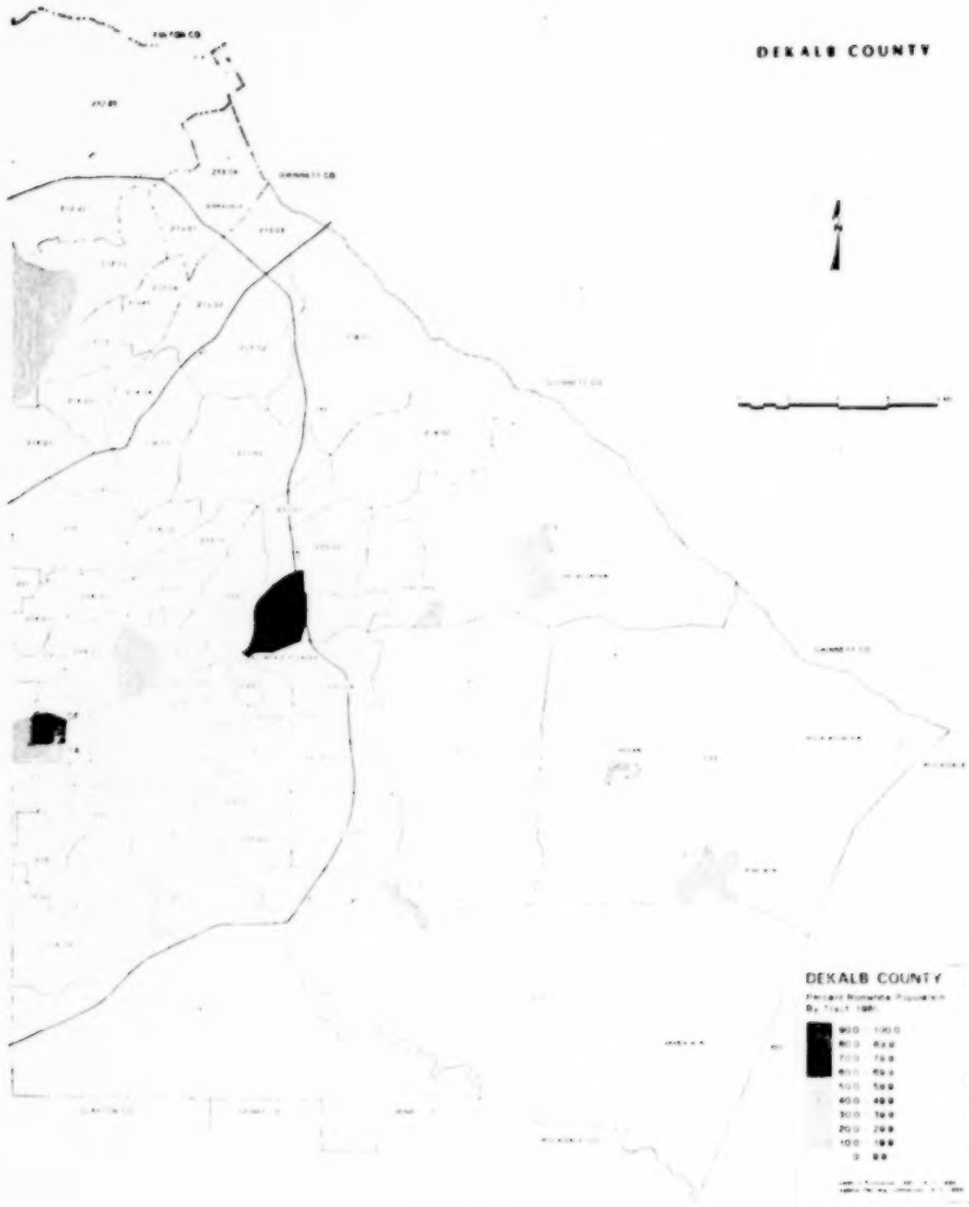

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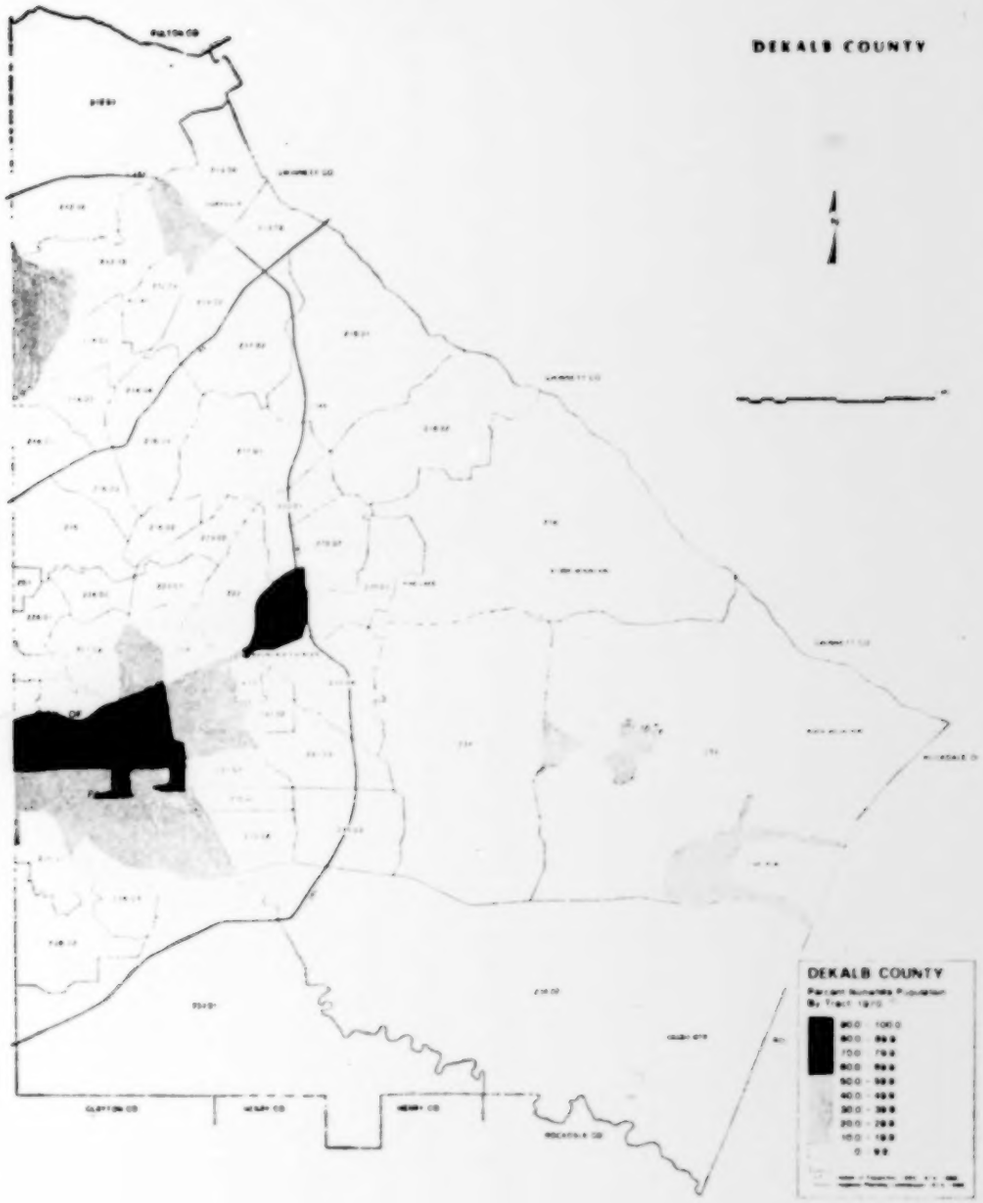

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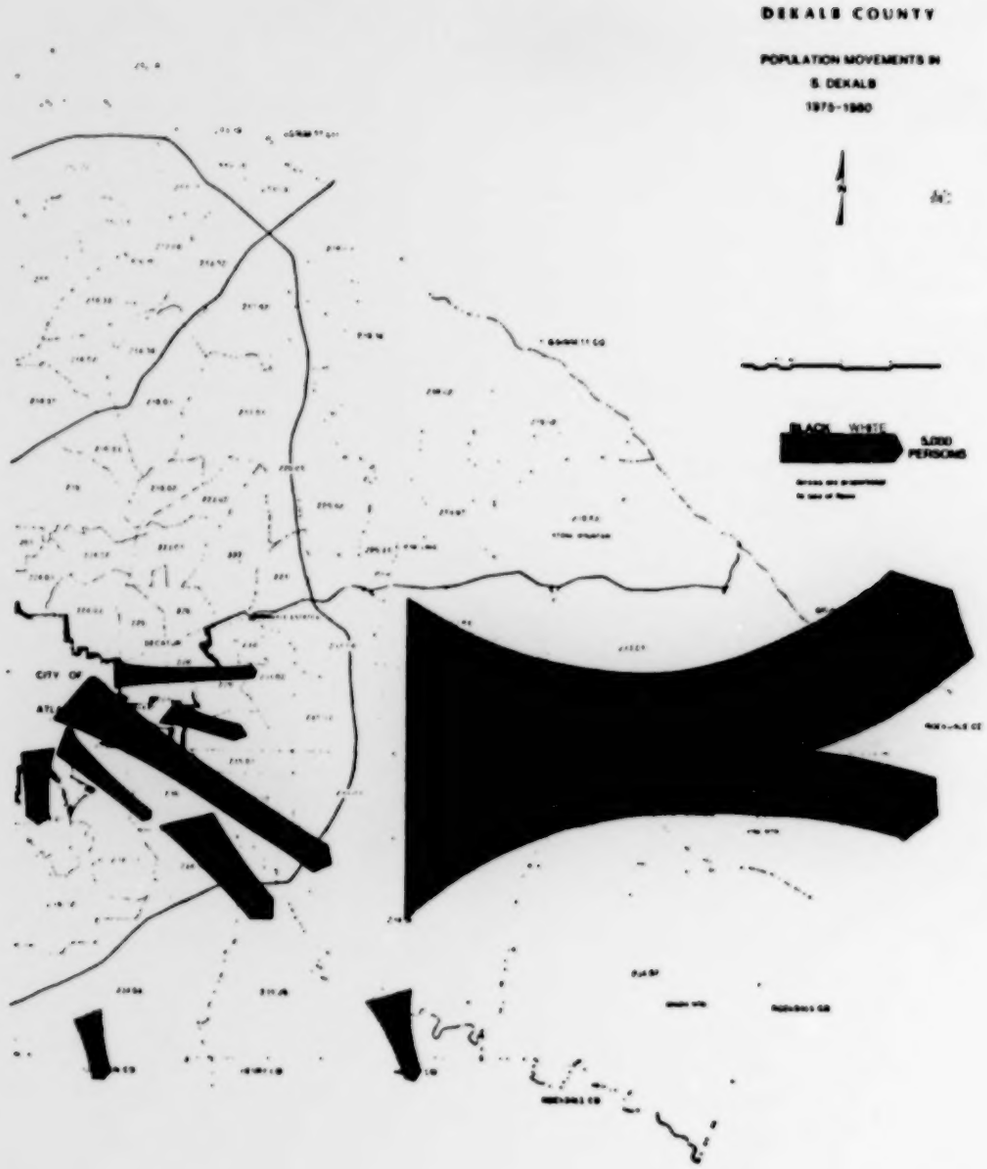
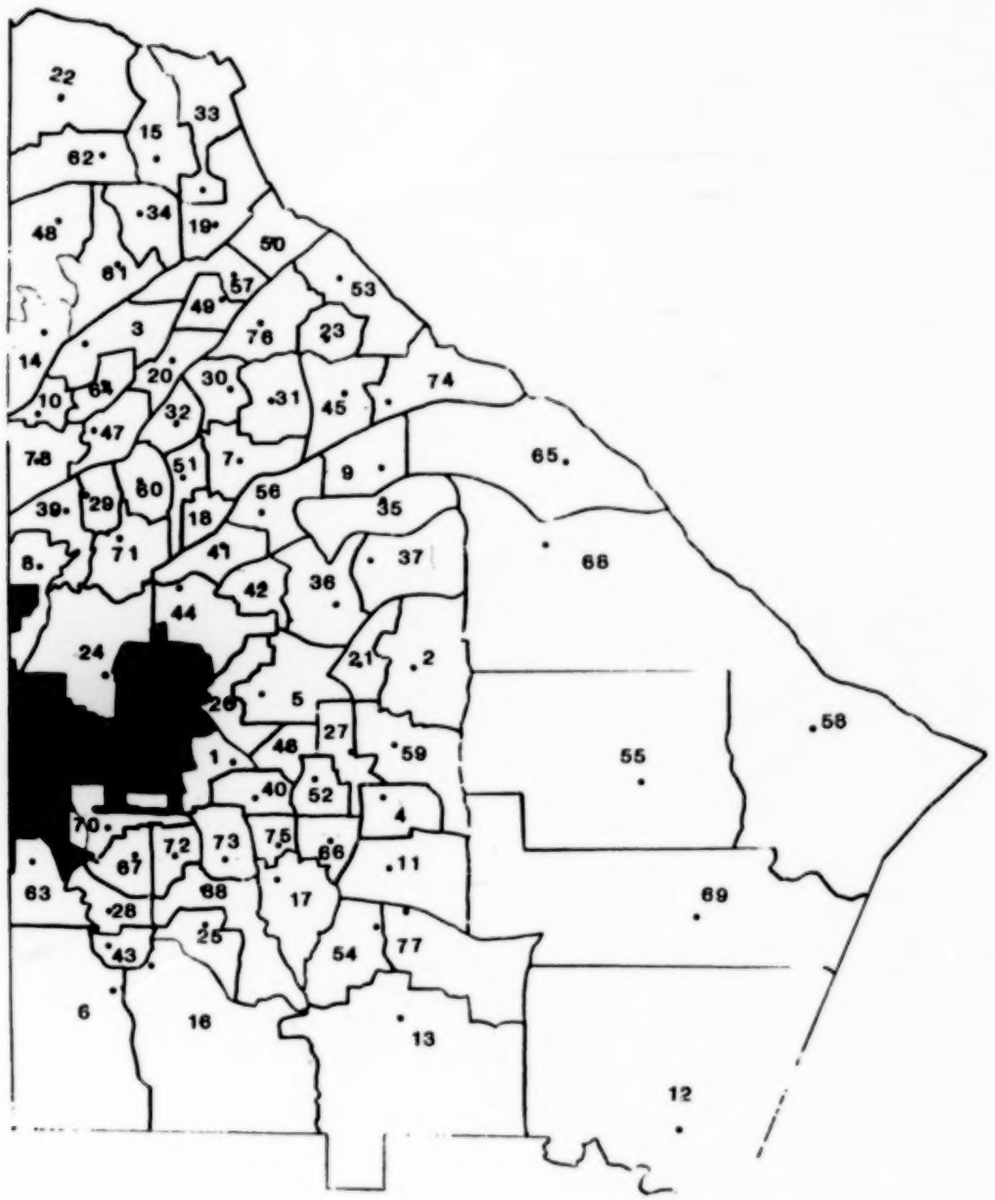


DEFENDANT'S EXHIBIT 25

DeKalb County Georgia School Districts
1969-1970



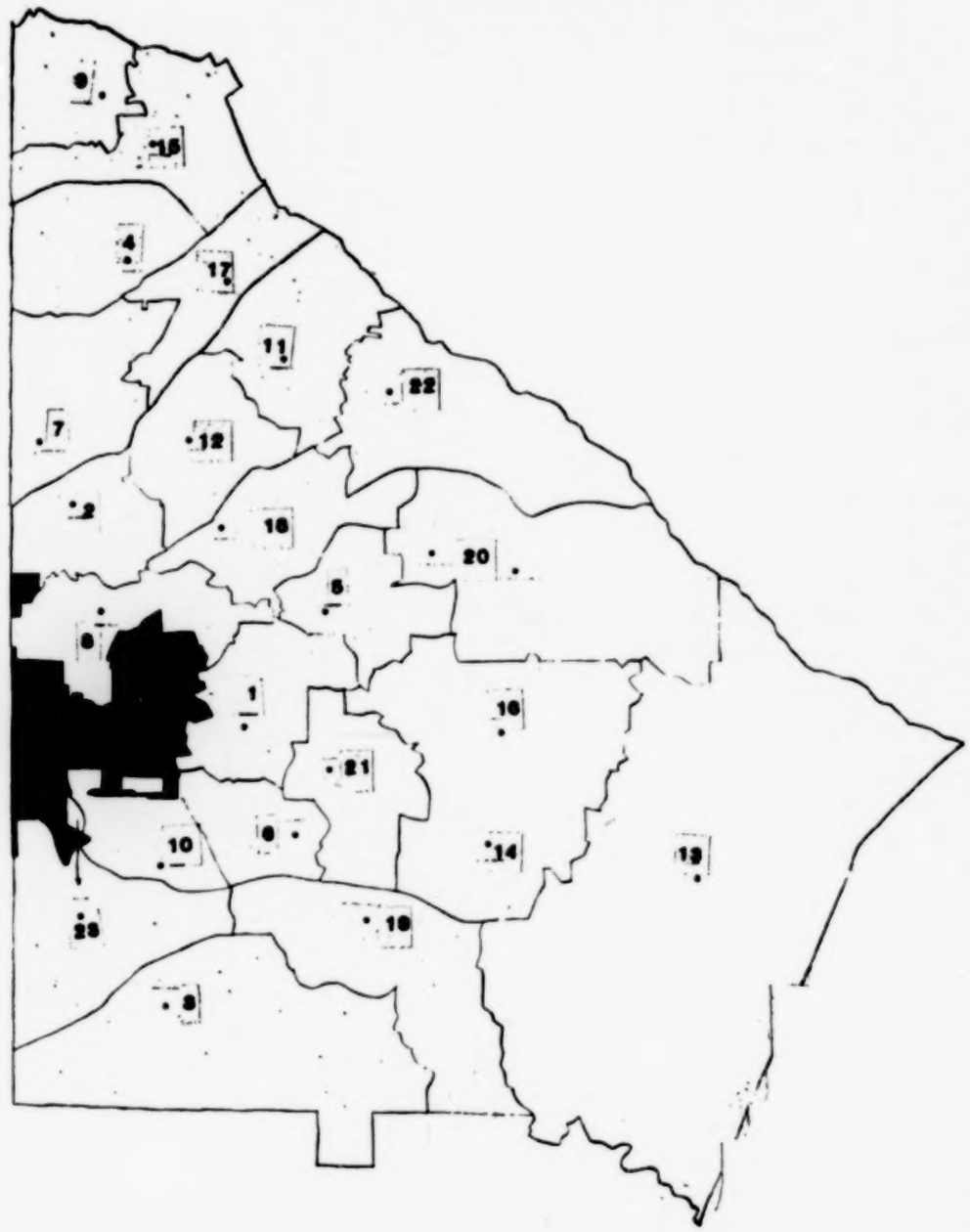
DeKalb Elementary
1969

1	Hooper Alexander	37	Jolly
2	Allgood	38	Kelley Lake
3	Ashford Park	39	Kittredge
4	Atherton	40	Knollwood
5	Avondale	41	Laurel Ridge
6	Bouldercrest	42	McLendon
7	Briarlake	43	Meadowview
8	Briar Vista	44	Medlock
9	Brockett	45	Midvale
10	Brookhaven	46	Midway
11	Canby Lane	47	Montclair
12	Murphy Candler	48	Montgomery
13	Chapel Hill	49	Northwoods
14	Jim Cherry	50	Oakcliff
15	Chestnut	51	Oak Grove
16	Clifton	52	Peachcrest
17	Columbia	53	Pleasantdale
18	Coralwood *	54	Rainbow
19	Doraville	55	Redan
20	Dresden	56	Rehoboth
21	Dunaire	57	Cary Reynolds
22	Dunwoody	58	Rock Chapel
23	Evansdale	59	Rowland
24	Fernbank	60	Sagamore Hills
25	Flat Shoals	61	Sexton Woods
26	Forrest Hills	62	Shallowford
27	Glen Haven	63	Sky Haven
28	Gresham park	64	Skyland
29	Margaret Harris	65	Smoke Rise
30	Hawthorne	66	Snapfinger
31	Henderson Mill	67	L.J. Steele
32	Heritage	68	Stone Mountain
33	Hightower	69	Stoneview
34	Huntley Hills	70	Terry Mill
35	Idlewood	71	W.D. Thompson
36	Indian Creek	72	Tilson

73	Toney	76	Warner
74	Tucker	77	Wesley Chapel
75	Wadsworth	78	Woodward

DEFENDANT'S EXHIBIT 32

DeKalb County, Georgia High School Districts
1985-1986



DeKalb High Schools
1985

1 Avondale
2 Briarcliff
3 Cedar Grove
4 Chamblee
5 Clarkston
6 Columbia
7 Cross Keys
8 Druid Hills
9 Dunwoody
10 Gordon
11 Henderson
12 Lakeside
13 Lithonia
14 Miller Grove
15 Peachtree
16 Redan
17 Sequoyah
18 Shamrock
19 S.W. DeKalb
20 Stone Mountain
21 Towers
22 Tucker
23 Walker

DEFENDANT'S EXHIBIT 41

PAGE: 1

ELEMENTARY SCHOOLS, ALL YEARS - ALLGOOD

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	ALLGOOD	735.0	99.70	2.0	0.30	0.0	0.00	27.00	93.00	2.00	7.00
70	ALLGOOD	806.0	99.80	2.0	0.20	0.0	0.00	30.00	93.70	2.00	6.30
71	ALLGOOD	842.0	99.90	1.0	0.10	0.0	0.00	34.00	97.00	1.00	3.00
72	ALLGOOD	704.0	99.40	2.0	0.30	2.0	0.30	29.00	96.70	1.00	3.30
73	ALLGOOD	722.0	99.30	3.0	0.40	2.0	0.30	29.00	94.00	2.00	6.00
74	ALLGOOD	734.0	98.90	2.0	0.30	6.0	0.80	31.00	97.00	1.00	3.00
75	ALLGOOD	714.0	98.50	3.0	0.40	8.0	1.10	30.00	91.00	3.00	9.00
76	ALLGOOD	729.0	98.90	1.0	0.10	7.0	0.90	30.00	86.00	5.00	14.00
77	ALLGOOD	743.0	98.70	0.0	0.00	10.0	1.30	32.00	86.00	5.00	14.00
78	ALLGOOD	739.0	97.80	0.0	0.00	17.0	2.30	30.00	83.00	6.00	17.00
79	ALLGOOD	716.0	97.50	0.0	0.00	18.0	2.40	29.00	83.00	6.00	17.00
80	ALLGOOD	672.0	96.30	3.0	0.40	23.0	3.30	28.50	83.00	6.00	17.00
81	ALLGOOD	623.0	95.80	8.0	1.20	19.0	3.00	26.00	81.00	6.00	19.00
82	ALLGOOD	588.0	94.80	9.0	1.50	23.0	3.70	24.50	80.00	6.00	20.00
83	ALLGOOD	540.0	94.90	12.0	2.10	17.0	3.00	22.75	79.00	6.00	21.00
84	ALLGOOD	500.0	89.00	41.0	7.30	21.0	3.70	21.50	75.00	7.00	25.00
85	ALLGOOD	478.0	84.90	57.0	10.10	28.0	5.00	23.00	79.30	6.00	20.70
86	ALLGOOD	477.0	81.00	74.0	12.60	38.0	6.50	22.00	73.30	8.00	26.60

ELEMENTARY SCHOOLS, ALL YEARS - ASHFORD PARK

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	ASHFORD PARK	779.0	100.00	0.0	0.00	0.0	0.00	29.00	94.00	2.00	6.00
70	ASHFORD PARK	727.0	100.00	0.0	0.00	0.0	0.00	31.00	96.90	1.00	3.10
71	ASHFORD PARK	695.0	100.00	0.0	0.00	0.0	0.00	27.00	93.00	2.00	7.00
72	ASHFORD PARK	656.0	99.70	1.0	0.20	1.0	0.20	29.00	93.50	2.00	6.50
73	ASHFORD PARK	618.0	99.00	5.0	0.80	1.0	0.20	28.00	93.00	2.00	7.00
74	ASHFORD PARK	574.0	98.00	11.0	1.90	1.0	0.20	27.00	93.00	2.00	7.00
75	ASHFORD PARK	607.0	92.20	42.0	6.40	9.0	1.40	28.00	90.00	3.00	10.00
76	ASHFORD PARK	545.0	92.20	35.0	5.90	11.0	2.00	26.00	90.00	3.00	10.00
77	ASHFORD PARK	520.0	90.40	41.0	7.20	14.0	2.40	25.00	83.00	5.00	17.00
78	ASHFORD PARK	492.0	92.70	28.0	5.30	11.0	2.10	24.00	83.00	5.00	17.00
79	ASHFORD PARK	454.0	91.70	28.0	5.70	13.0	2.60	24.00	81.00	5.50	19.00
80	ASHFORD PARK	431.0	91.70	25.0	5.30	14.0	2.90	21.50	80.00	5.50	20.00
81	ASHFORD PARK	397.0	90.00	29.0	6.60	15.0	3.50	18.50	77.00	5.50	23.00
82	ASHFORD PARK	362.0	87.20	37.0	8.90	16.0	3.80	17.00	76.00	5.50	24.00
83	ASHFORD PARK	337.0	84.90	41.0	10.30	19.0	4.90	16.00	71.00	6.50	29.00
84	ASHFORD PARK	430.0	78.90	66.0	12.50	47.0	8.60	22.00	75.90	7.00	24.10
85	ASHFORD PARK	444.0	77.20	83.0	14.40	48.0	8.30	23.00	76.70	7.00	23.30
86	ASHFORD PARK	429.0	75.10	87.0	15.20	55.0	9.60	25.00	78.10	7.00	21.90

ELEMENTARY SCHOOLS, ALL YEARS - ATHERTON

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	ATHERTON	526.0	100.00	0.0	0.00	0.0	0.00	20.00	91.00	2.00	9.00
70	ATHERTON	520.0	100.00	0.0	0.00	0.0	0.00	22.00	88.00	3.00	12.00
71	ATHERTON	743.0	100.00	0.0	0.00	0.0	0.00	27.00	93.00	2.00	7.00
72	ATHERTON	772.0	99.70	2.0	0.30	0.0	0.00	30.00	93.80	2.00	6.20
73	ATHERTON	862.0	100.00	0.0	0.00	0.0	0.00	31.00	94.00	2.00	6.00
74	ATHERTON	912.0	99.30	1.0	0.10	5.0	0.50	37.00	95.00	2.00	5.00
75	ATHERTON	557.0	98.20	2.0	0.40	8.0	1.40	25.00	93.00	2.00	7.00
76	ATHERTON	560.0	98.40	2.0	0.40	7.0	1.20	24.00	89.00	3.00	11.00
77	ATHERTON	532.0	92.40	35.0	6.00	9.0	1.60	25.00	86.00	4.00	14.00
78	ATHERTON	470.0	91.10	37.0	7.20	9.0	1.80	21.00	78.00	6.00	22.00
79	ATHERTON	462.0	84.80	74.0	13.60	9.0	1.70	21.00	78.00	6.00	22.00
80	ATHERTON	455.0	78.60	109.0	18.80	15.0	2.60	23.50	80.00	6.00	20.00
81	ATHERTON	389.0	69.80	151.0	27.10	17.0	3.00	21.75	77.00	6.50	23.00
82	ATHERTON	326.0	58.50	209.0	37.50	22.0	3.90	21.00	75.00	7.00	25.00
83	ATHERTON	295.0	49.30	279.0	46.70	24.0	4.00	23.00	75.00	7.50	25.00
84	ATHERTON	253.0	41.20	334.0	54.40	27.0	4.40	21.25	66.90	10.50	33.10
85	ATHERTON	240.0	37.00	378.0	58.30	30.0	4.60	23.00	68.10	10.75	31.90
86	ATHERTON	184.0	28.60	434.0	67.50	25.0	3.90	21.00	65.60	11.00	34.40

ELEMENTARY SCHOOLS, ALL YEARS - AUSTIN

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
75	AUSTIN	507.0	99.40	1.0	0.20	2.0	0.40	20.00	87.00	3.00	13.00
76	AUSTIN	533.0	99.10	0.0	0.00	5.0	0.90	22.00	88.00	3.00	12.00
77	AUSTIN	559.0	99.50	0.0	0.00	3.0	0.50	24.00	89.00	3.00	11.00
78	AUSTIN	706.0	99.30	1.0	0.10	4.0	0.60	27.00	82.00	6.00	18.00
79	AUSTIN	691.0	98.40	2.0	0.30	9.0	1.30	29.50	83.00	6.00	17.00
80	AUSTIN	696.0	98.20	1.0	0.10	12.0	1.70	28.00	81.00	6.50	19.00
81	AUSTIN	647.0	98.00	1.0	0.20	12.0	1.90	26.75	82.00	6.00	18.00
82	AUSTIN	571.0	97.10	1.0	0.20	16.0	2.70	23.00	79.00	6.00	21.00
83	AUSTIN	472.0	96.10	1.0	0.20	18.0	3.70	20.50	80.00	5.00	20.00
84	AUSTIN	428.0	96.40	0.0	0.00	16.0	3.60	20.50	83.70	4.00	16.30
85	AUSTIN	614.0	95.90	7.0	1.10	19.0	3.00	27.75	82.20	6.00	17.80
86	AUSTIN	585.0	94.70	7.0	1.10	26.0	4.20	26.00	86.70	4.00	13.30

ELEMENTARY SCHOOLS, ALL YEARS - AVONDALE

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	AVONDALE	517.0	79.80	131.0	20.20	0.0	0.00	26.00	93.00	2.00	7.00
70	AVONDALE	567.0	84.50	104.0	15.50	0.0	0.00	29.00	93.50	2.00	6.50
71	AVONDALE	563.0	84.20	102.0	15.20	4.0	0.60	26.00	93.00	2.00	7.00
72	AVONDALE	477.0	84.10	90.0	15.90	0.0	0.00	22.00	88.00	3.00	12.00
73	AVONDALE	510.0	84.00	94.0	15.50	3.0	0.50	20.00	87.00	3.00	13.00
74	AVONDALE	441.0	80.30	101.0	18.40	7.0	1.30	24.00	92.00	2.00	8.00
75	AVONDALE	418.0	68.50	189.0	31.00	3.0	0.50	25.00	89.00	3.00	11.00
76	AVONDALE	386.0	63.90	211.0	34.90	7.0	1.20	23.00	85.00	4.00	15.00
77	AVONDALE	383.0	60.50	243.0	38.40	7.0	1.10	24.00	83.00	5.00	17.00
78	AVONDALE	366.0	55.80	272.0	41.50	18.0	2.70	25.00	78.00	7.00	22.00
79	AVONDALE	316.0	51.30	275.0	44.60	25.0	4.10	25.00	82.00	5.50	18.00
80	AVONDALE	294.0	45.90	319.0	49.80	27.0	4.20	27.00	82.00	6.00	18.00
81	AVONDALE	280.0	43.60	334.0	52.00	28.0	4.40	24.75	78.00	7.00	22.00
82	AVONDALE	252.0	40.60	354.0	57.10	14.0	2.30	25.13	76.00	7.87	24.00
83	AVONDALE	209.0	36.20	353.0	61.20	15.0	12.60	21.25	71.00	8.50	29.00
84	AVONDALE	193.0	31.60	395.0	64.80	22.0	3.60	24.50	74.20	8.50	25.80
85	AVONDALE	179.0	31.20	380.0	66.20	15.0	2.60	23.00	74.20	8.00	25.80
86	AVONDALE	150.0	23.80	463.0	73.40	18.0	2.90	25.00	75.80	8.00	24.20

ELEMENTARY SCHOOLS, ALL YEARS - BOB MATHIS

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
75	BOB MATHIS	480.0	97.20	6.0	1.20	8.0	1.60	20.00	87.00	3.00	13.00
76	BOB MATHIS	481.0	93.80	25.0	4.90	7.0	1.40	20.00	83.00	4.00	17.00
77	BOB MATHIS	421.0	73.20	149.0	25.90	5.0	0.90	22.00	81.00	5.00	19.00
78	BOB MATHIS	298.0	53.00	257.0	45.70	7.0	1.30	22.00	79.00	6.00	21.00
79	BOB MATHIS	173.0	32.40	352.0	65.90	9.0	1.70	22.00	81.00	5.00	19.00
80	BOB MATHIS	68.0	14.60	383.0	82.20	15.0	3.20	23.00	79.00	6.00	21.00
81	BOB MATHIS	50.0	11.40	378.0	86.10	11.0	2.50	17.75	71.00	7.25	29.00
82	BOB MATHIS	35.0	8.30	378.0	90.00	7.0	1.70	16.50	70.00	7.00	30.00
83	BOB MATHIS	29.0	6.60	406.0	92.10	6.0	1.40	16.25	68.40	7.50	31.60
84	BOB MATHIS	20.0	4.90	386.0	94.10	4.0	1.00	15.00	65.20	8.00	34.80
85	BOB MATHIS	11.0	2.50	430.0	96.20	6.0	1.30	17.50	66.70	8.75	33.30
86	BOB MATHIS	2.0	0.40	462.0	98.10	7.0	1.50	17.00	65.40	9.00	34.60

ELEMENTARY SCHOOLS, ALL YEARS - BOULDERCREST

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	BOULDERCREST	430.0	100.00	0.0	0.00	0.0	0.00	18.00	82.00	4.00	18.00
70	BOULDERCREST	467.0	100.00	0.0	0.00	0.0	0.00	22.00	95.70	1.00	4.30
71	BOULDERCREST	429.0	100.00	0.0	0.00	0.0	0.00	22.00	100.00	0.00	0.00
72	BOULDERCREST	433.0	100.00	0.0	0.00	0.0	0.00	20.00	83.30	4.00	16.70
73	BOULDERCREST	413.0	96.30	16.0	3.70	0.0	0.00	20.00	83.00	4.00	17.00
74	BOULDERCREST	579.0	85.00	100.0	14.70	2.0	0.30	32.00	97.00	1.00	3.00

PAGE: 1

ELEMENTARY SCHOOL, ALL YEARS - BRIARLAKE

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	BRIARLAKE	580.0	99.20	3.0	0.50	2.0	0.30	22.00	96.00	1.00	4.00
70	BRIARLAKE	592.0	98.80	3.0	0.50	4.0	0.60	25.00	96.20	1.00	3.80
71	BRIARLAKE	667.0	98.60	3.0	0.40	5.0	0.70	27.00	96.00	1.00	4.00
72	BRIARLAKE	648.0	98.30	3.0	0.50	8.0	1.30	28.00	96.60	1.00	3.40
73	BRIARLAKE	589.0	98.40	2.0	0.30	8.0	1.30	27.00	93.00	2.00	7.00
74	BRIARLAKE	531.0	98.50	2.0	0.40	6.0	1.10	25.00	96.00	1.00	4.00
75	BRIARLAKE	493.0	98.00	2.0	0.40	8.0	1.60	23.00	92.00	2.00	8.00
76	BRIARLAKE	469.0	97.90	0.0	0.00	10.0	2.10	20.00	83.00	4.00	17.00
77	BRIARLAKE	460.0	97.00	5.0	1.10	9.0	1.90	19.00	86.00	3.00	14.00
78	BRIARLAKE	397.0	95.90	11.0	2.70	6.0	1.40	17.00	81.00	4.00	19.00
79	BRIARLAKE	378.0	93.80	15.0	3.70	10.0	2.50	24.00	86.00	4.00	14.00
80	BRIARLAKE	330.0	91.90	13.0	3.60	16.0	4.50	17.00	81.00	4.00	19.00
81	BRIARLAKE	318.0	89.30	21.0	5.90	17.0	4.80	17.00	77.00	5.00	23.00
82	BRIARLAKE	293.0	85.70	33.0	9.60	16.0	4.70	16.00	76.00	5.00	24.00
83	BRIARLAKE	341.0	80.40	50.0	11.80	33.0	7.80	18.50	79.00	5.00	21.00
84	BRIARLAKE	333.0	77.10	74.0	17.10	25.0	5.80	19.25	79.40	5.00	20.60
85	BRIARLAKE	304.0	74.70	77.0	18.90	26.0	6.40	18.75	80.60	4.50	19.40
86	BRIARLAKE	271.0	66.90	110.0	27.20	24.0	5.90	16.00	72.70	6.00	27.30

PAGE: 9

ELEMENTARY SCHOOLS, ALL YEARS - BRIAR VISTA

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
70	BRIAR VISTA	587.0	99.80	0.0	0.00	1.0	0.20	30.00	96.80	1.00	3.20
71	BRIAR VISTA	569.0	98.60	0.0	0.00	8.0	1.40	26.00	96.00	1.00	4.00
72	BRIAR VISTA	543.0	96.40	0.0	0.00	20.0	3.60	25.00	96.20	1.00	3.80
73	BRIAR VISTA	470.0	93.80	0.0	0.00	31.0	6.20	21.00	91.00	2.00	9.00
74	BRIAR VISTA	686.0	96.30	0.0	0.00	26.0	3.70	19.00	95.00	1.00	5.00
75	BRIAR VISTA	717.0	93.10	6.0	0.80	47.0	6.00	32.00	94.00	2.00	6.00
76	BRIAR VISTA	608.0	90.30	6.0	0.90	59.0	8.70	28.00	90.00	3.00	10.00
77	BRIAR VISTA	552.0	89.90	14.0	2.30	48.0	7.80	25.00	86.00	4.00	14.00
78	BRIAR VISTA	441.0	86.00	13.0	2.50	59.0	11.50	24.00	83.00	5.00	17.00
79	BRIAR VISTA	406.0	86.40	8.0	1.70	56.0	11.90	21.50	81.00	5.00	19.00
80	BRIAR VISTA	356.0	82.60	17.0	3.90	58.0	13.40	20.50	77.00	6.00	23.00
81	BRIAR VISTA	322.0	77.80	29.0	7.00	63.0	15.20	19.00	79.00	5.00	21.00
82	BRIAR VISTA	306.0	76.30	47.0	11.70	48.0	12.00	18.00	78.00	5.00	22.00
83	BRIAR VISTA	288.0	70.40	64.0	15.60	57.0	13.90	17.50	24.00	6.00	26.00
84	BRIAR VISTA	260.0	64.80	100.0	24.90	41.0	10.20	17.00	73.90	6.00	26.10
85	BRIAR VISTA	231.0	56.80	135.0	33.20	41.0	10.00	19.00	79.20	5.00	20.80
86	BRIAR VISTA	220.0	52.30	164.0	39.00	37.0	8.80	18.00	81.80	4.00	18.20

ELEMENTARY SCHOOLS, ALL YEARS - BROCKETT

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	BROCKETT	630.0	99.50	0.0	0.00	3.0	0.50	25.00	96.00	1.00	4.00
70	BROCKETT	892.0	99.80	0.0	0.00	2.0	0.20	35.00	97.20	1.00	2.80
71	BROCKETT	802.0	99.30	0.0	0.00	6.0	0.70	34.00	97.00	1.00	3.00
72	BROCKETT	771.0	99.20	0.0	0.00	6.0	0.80	31.00	91.20	3.00	8.80
73	BROCKETT	777.0	99.20	0.0	0.00	6.0	0.80	30.00	88.00	4.00	12.00
74	BROCKETT	715.0	98.90	0.0	0.00	8.0	1.10	32.00	97.00	1.00	3.00
75	BROCKETT	619.0	98.70	0.0	0.00	8.0	1.30	28.00	93.00	2.00	7.00
76	BROCKETT	602.0	98.40	1.0	0.20	9.0	1.50	27.00	90.00	3.00	10.00
77	BROCKETT	572.0	99.30	0.0	0.00	4.0	0.70	28.00	90.00	3.00	10.00
78	BROCKETT	527.0	99.20	0.0	0.00	4.0	0.80	24.00	86.00	4.00	14.00
79	BROCKETT	504.0	99.00	0.0	0.00	5.0	1.00	23.50	82.00	5.00	18.00
80	BROCKETT	470.0	98.50	0.0	0.00	7.0	1.50	23.50	82.00	5.00	18.00
81	BROCKETT	431.0	97.30	0.0	0.00	12.0	2.70	19.25	79.00	5.00	21.00
82	BROCKETT	437.0	97.10	2.0	0.40	11.0	2.50	18.50	77.00	5.50	23.00
83	BROCKETT	473.0	96.10	2.0	0.40	17.0	3.40	21.00	79.00	5.50	21.00
84	BROCKETT	421.0	95.00	4.0	0.90	18.0	4.10	20.00	80.00	5.00	20.00
85	BROCKETT	417.0	92.70	6.0	1.30	27.0	6.00	18.25	75.30	6.00	24.70
86	BROCKETT	407.0	92.10	9.0	2.00	26.0	5.90	16.50	71.70	6.50	28.30

ELEMENTARY SCHOOL, ALL YEARS - BROOKHAVEN

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	BROOKHAVEN	384.0	100.00	0.0	0.00	0.0	0.00	21.00	100.00	0.00	0.00
70	BROOKHAVEN	350.0	100.00	0.0	0.00	0.0	0.00	17.00	94.00	1.00	6.00
71	BROOKHAVEN	323.0	100.00	0.0	0.00	0.0	0.00	15.00	94.00	1.00	6.00
72	BROOKHAVEN	333.0	100.00	0.0	0.00	0.0	0.00	18.00	94.70	1.00	5.30
73	BROOKHAVEN	289.0	100.00	0.0	0.00	0.0	0.00	17.00	94.00	1.00	6.00

ELEMENTARY SCHOOLS, ALL YEARS - CANBY LANE

YEAR	SCHOOL	STUDENTS WHITE NO.	STUDENTS WHITE %	STUDENTS BLACK NO.	STUDENTS BLACK %	STUDENTS OTHER NO.	STUDENTS OTHER %	FACULTY WHITE NO.	FACULTY WHITE %	FACULTY BLACK NO.	FACULTY BLACK %
69	CANBY LANE	899.0	99.90	1.0	0.10	0.0	0.00	30.00	88.00	4.00	12.00
70	CANBY LANE	698.0	99.86	1.0	0.14	0.0	0.00	26.00	92.90	2.00	7.10
71	CANBY LANE	760.0	99.90	1.0	0.10	0.0	0.00	29.00	94.00	2.00	6.00
72	CANBY LANE	809.0	99.90	0.0	0.00	1.0	0.10	31.00	93.90	2.00	6.10
73	CANBY LANE	809.0	99.90	0.0	0.00	1.0	0.10	32.00	94.00	2.00	6.00
74	CANBY LANE	780.0	99.20	1.0	0.10	5.0	0.60	33.00	97.00	1.00	3.00
75	CANBY LANE	730.0	96.30	23.0	3.00	5.0	0.70	31.00	91.00	3.00	9.00
76	CANBY LANE	634.0	91.20	56.0	8.10	5.0	0.70	29.00	91.00	3.00	9.00
77	CANBY LANE	534.0	79.00	136.0	20.10	6.0	0.90	26.00	84.00	5.00	16.00
78	CANBY LANE	354.0	53.10	309.0	46.30	4.0	0.60	26.00	79.00	7.00	21.00
79	CANBY LANE	186.0	33.90	360.0	65.60	3.0	0.50	23.00	77.00	7.00	23.00
80	CANBY LANE	145.0	25.00	431.0	74.20	5.0	0.80	23.00	74.00	8.00	26.00
81	CANBY LANE	94.0	17.60	436.0	81.60	4.0	0.70	20.75	75.00	7.00	25.00
82	CANBY LANE	90.0	16.60	451.0	83.10	2.0	0.40	20.75	72.00	8.00	28.00
83	CANBY LANE	68.0	13.30	440.0	86.30	2.0	0.40	18.25	66.00	9.25	34.00
84	CANBY LANE	48.0	9.50	452.0	89.70	4.0	0.80	19.25	70.00	8.25	30.00
85	CANBY LANE	30.0	5.80	476.0	92.80	7.0	1.40	17.50	62.50	10.50	37.50
86	CANBY LANE	34.0	6.70	468.0	91.60	9.0	1.80	20.00	69.00	9.00	31.00

ELEMENTARY SCHOOL, ALL YEARS - CAREY REYNOLDS

YEAR	SCHOOL	STUDENTS WHITE NO.	STUDENTS WHITE %	STUDENTS BLACK NO.	STUDENTS BLACK %	STUDENTS OTHER NO.	STUDENTS OTHER %	FACULTY WHITE NO.	FACULTY WHITE %	FACULTY BLACK NO.	FACULTY BLACK %
69	CAREY REYNOLDS	813.0	99.90	0.0	0.00	1.0	0.10	32.00	100.00	0.00	0.00
70	CAREY REYNOLDS	821.0	99.40	0.0	0.00	5.0	0.60	35.00	97.20	1.00	2.80
71	CAREY REYNOLDS	704.0	98.90	0.0	0.00	8.0	1.10	28.00	97.00	1.00	3.00
72	CAREY REYNOLDS	609.0	98.50	2.0	0.30	7.0	1.10	26.00	96.00	1.00	4.00
74	CAREY REYNOLDS	546.0	95.80	9.0	1.60	15.0	2.60	25.00	96.00	1.00	4.00
75	CAREY REYNOLDS	525.0	94.80	15.0	2.70	14.0	2.50	24.00	92.00	2.00	8.00
76	CAREY REYNOLDS	554.0	94.40	15.0	2.60	18.0	3.10	23.00	88.00	3.00	12.00
77	CAREY REYNOLDS	518.0	93.60	17.0	3.10	17.0	3.10	24.00	86.00	4.00	14.00
78	CAREY REYNOLDS	467.0	91.00	19.0	3.70	27.0	5.20	21.00	81.00	5.00	19.00
79	CAREY REYNOLDS	420.0	89.20	16.0	3.40	35.0	7.50	19.50	78.00	5.50	22.00
80	CAREY REYNOLDS	375.0	83.30	21.0	4.70	54.0	12.00	22.00	81.00	5.00	19.00
81	CAREY REYNOLDS	336.0	78.30	35.0	8.20	58.0	13.50	18.75	77.00	5.50	23.00
82	CAREY REYNOLDS	294.0	67.60	42.0	9.70	99.0	22.70	18.00	75.00	6.00	25.00
83	CAREY REYNOLDS	394.0	71.40	51.0	9.20	107.0	19.40	24.00	76.00	7.50	24.00
84	CAREY REYNOLDS	393.0	65.60	56.0	9.30	150.0	25.00	24.00	76.20	7.50	23.80
85	CAREY REYNOLDS	352.0	59.80	75.0	12.70	162.0	27.50	22.75	72.80	8.50	27.20
86	CAREY REYNOLDS	302.0	53.80	113.0	20.10	146.0	26.00	21.00	72.40	8.00	27.60

ELEMENTARY SCHOOLS, ALL YEARS - CEDAR GROVE

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
75	CEDAR GROVE	509.0	87.60	67.0	11.50	5.0	0.90	23.00	88.00	3.00	12.00
76	CEDAR GROVE	472.0	78.10	130.0	21.50	2.0	0.30	24.00	89.00	3.00	11.00
77	CEDAR GROVE	408.0	66.40	202.0	32.90	4.0	0.70	27.00	87.00	4.00	13.00
78	CEDAR GROVE	345.0	44.60	422.0	54.60	6.0	0.80	29.00	83.00	6.00	17.00
79	CEDAR GROVE	278.0	37.80	453.0	61.60	4.0	0.50	27.50	80.00	7.00	20.00
80	CEDAR GROVE	211.0	30.00	485.0	68.90	8.0	1.10	29.00	81.00	7.00	19.00
81	CEDAR GROVE	185.0	26.40	509.0	72.60	7.0	1.00	27.25	78.00	7.50	22.00
82	CEDAR GROVE	175.0	25.80	501.0	73.80	3.0	0.40	25.87	74.00	9.00	26.00
83	CEDAR GROVE	154.0	22.70	519.0	76.50	5.0	0.70	26.00	76.00	8.00	24.00
84	CEDAR GROVE	111.0	17.80	505.0	81.20	6.0	1.00	22.50	71.40	9.00	28.60
85	CEDAR GROVE	90.0	14.20	539.0	85.30	3.0	0.50	23.50	72.30	9.00	27.70
86	CEDAR GROVE	68.0	10.40	585.0	89.60	0.0	0.00	23.00	71.90	9.00	28.10

ELEMENTARY SCHOOLS, ALL YEARS - CHAPEL HILL

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	CHAPEL HILL	555.0	89.10	68.0	10.90	0.0	0.00	22.00	88.00	3.00	12.00
70	CHAPEL HILL	606.0	88.60	78.0	11.40	0.0	0.00	28.00	90.30	3.00	9.70
71	CHAPEL HILL	659.0	87.40	91.0	12.10	4.0	0.50	30.00	91.00	3.00	9.00
72	CHAPEL HILL	743.0	88.50	93.0	11.10	4.0	0.50	30.00	90.90	3.00	9.10
73	CHAPEL HILL	837.0	91.00	81.0	8.80	2.0	0.20	33.00	89.00	4.00	11.00
74	CHAPEL HILL	730.0	89.80	81.0	10.00	2.0	0.20	33.00	94.00	2.00	6.00
75	CHAPEL HILL	677.0	87.50	93.0	12.00	4.0	0.50	33.00	92.00	3.00	8.00
76	CHAPEL HILL	649.0	86.40	100.0	13.30	2.0	0.30	31.00	91.00	3.00	9.00
77	CHAPEL HILL	581.0	77.80	162.0	21.70	4.0	0.50	31.00	84.00	6.00	16.00
78	CHAPEL HILL	432.0	58.20	307.0	41.40	3.0	0.40	28.00	78.00	8.00	22.00
79	CHAPEL HILL	245.0	36.00	431.0	63.30	5.0	0.70	26.00	76.00	8.00	24.00
80	CHAPEL HILL	147.0	22.00	515.0	77.10	6.0	0.90	27.00	77.00	8.00	23.00
81	CHAPEL HILL	75.0	11.10	588.0	87.40	10.0	1.50	26.00	78.00	7.50	22.00
82	CHAPEL HILL	50.0	7.50	608.0	91.00	10.0	1.50	24.25	74.00	8.50	26.00
83	CHAPEL HILL	32.0	4.60	652.0	93.70	12.0	1.70	24.25	72.00	9.50	28.00
84	CHAPEL HILL	12.0	1.60	721.0	96.90	11.0	1.50	27.00	72.00	10.00	28.00
85	CHAPEL HILL	11.0	1.30	795.0	97.50	9.0	1.10	27.50	65.50	14.50	34.50
86	CHAPEL HILL	8.0	0.90	856.0	98.50	5.0	0.60	27.00	66.70	18.00	33.30

ELEMENTARY SCHOOL, ALL YEARS - CHESNUT

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	CHESNUT	485.0	100.00	0.0	0.00	0.0	0.00	19.00	95.00	1.00	5.00
70	CHESNUT	825.0	100.00	0.0	0.00	0.0	0.00	29.00	96.70	1.00	3.30
71	CHESNUT	668.0	100.00	0.0	0.00	0.0	0.00	25.00	96.00	1.00	4.00
72	CHESNUT	601.0	100.00	0.0	0.00	0.0	0.00	25.00	96.20	1.00	3.80
73	CHESNUT	576.0	100.00	0.0	0.00	0.0	0.00	24.00	96.00	1.00	4.00
74	CHESNUT	619.0	100.00	0.0	0.00	0.0	0.00	26.00	96.00	1.00	4.00
75	CHESNUT	587.0	99.70	0.0	0.00	2.0	0.30	25.00	86.00	4.00	14.00
76	CHESNUT	590.0	99.50	1.0	0.20	2.0	0.30	24.00	89.00	3.00	11.00
77	CHESNUT	542.0	98.55	2.0	0.36	6.0	1.09	23.00	85.00	4.00	15.00
78	CHESNUT	528.0	98.70	2.0	0.40	5.0	0.90	22.00	81.00	5.00	19.00
79	CHESNUT	530.0	98.00	3.0	0.60	8.0	1.50	22.50	82.00	5.00	18.00
80	CHESNUT	482.0	97.20	4.0	0.80	10.0	2.00	22.00	77.00	6.50	23.00
81	CHESNUT	407.0	94.40	9.0	2.10	15.0	3.60	17.25	74.00	6.00	26.00
82	CHESNUT	361.0	94.50	9.0	2.40	12.0	3.10	17.00	74.00	6.00	26.00
83	CHESNUT	407.0	88.90	29.0	6.30	22.0	4.80	18.75	76.00	6.00	24.00
84	CHESNUT	360.0	87.40	30.0	7.30	22.0	5.30	17.75	74.70	6.00	25.30
85	CHESNUT	337.0	86.20	33.0	8.40	21.0	5.40	17.50	71.40	7.00	28.60
86	CHESNUT	454.0	82.20	50.0	9.10	48.0	8.70	23.00	76.70	7.00	23.30

ELEMENTARY SCHOOLS, ALL YEARS - CLIFTON

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	CLIFTON	747.0	95.30	37.0	4.70	0.0	0.00	28.00	90.00	3.00	10.00
70	CLIFTON	623.0	93.00	47.0	7.00	0.0	0.00	26.00	92.90	2.00	7.10
71	CLIFTON	629.0	93.70	42.0	6.30	0.0	0.00	25.00	93.00	2.00	7.00
72	CLIFTON	594.0	90.50	62.0	9.50	0.0	0.00	26.00	92.90	2.00	7.10
73	CLIFTON	515.0	76.40	159.0	23.60	0.0	0.00	25.00	93.00	2.00	7.00
74	CLIFTON	169.0	36.30	297.0	63.70	0.0	0.00	18.00	78.00	5.00	22.00
75	CLIFTON	123.0	23.00	412.0	77.00	0.0	0.00	27.00	75.00	9.00	25.00
76	CLIFTON	66.0	11.70	496.0	88.30	0.0	0.00	20.00	71.00	8.00	29.00
77	CLIFTON	36.0	5.50	616.0	94.50	0.0	0.00	23.00	72.00	9.00	28.00
78	CLIFTON	18.0	3.20	550.0	96.50	2.0	0.40	20.00	69.00	9.00	31.00
79	CLIFTON	12.0	2.10	554.0	97.50	2.0	0.40	21.00	75.00	7.00	25.00
80	CLIFTON	8.0	1.40	563.0	98.40	1.0	0.20	23.00	77.00	7.00	23.00
81	CLIFTON	7.0	1.30	527.0	98.50	1.0	0.20	20.25	73.00	7.50	27.00
82	CLIFTON	8.0	1.60	492.0	98.40	0.0	0.00	20.00	74.00	6.87	26.00
83	CLIFTON	6.0	1.30	452.0	98.70	0.0	0.00	17.75	71.00	7.75	29.00
84	CLIFTON	8.0	1.70	464.0	98.30	0.0	0.00	18.00	67.90	8.50	32.10
85	CLIFTON	9.0	1.80	491.0	97.20	5.0	1.00	19.00	67.90	9.00	32.10
86	CLIFTON	7.0	1.40	480.0	97.60	5.0	1.00	20.00	69.00	9.00	31.00

ELEMENTARY SCHOOLS, ALL YEARS - COLUMBIA

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	COLUMBIA	793.0	99.20	0.0	0.00	6.0	0.80	31.00	94.00	2.00	6.00
70	COLUMBIA	821.0	99.80	0.0	0.00	2.0	0.20	32.00	94.10	2.00	5.90
71	COLUMBIA	703.0	99.40	1.0	0.10	3.0	0.40	29.00	97.00	1.00	3.00
72	COLUMBIA	668.0	97.70	12.0	1.80	4.0	0.60	28.00	93.30	2.00	6.70
73	COLUMBIA	611.0	89.10	73.0	10.60	2.0	0.30	28.00	93.00	2.00	7.00
74	COLUMBIA	471.0	71.90	181.0	27.60	3.0	0.50	29.00	91.00	3.00	9.00
75	COLUMBIA	336.0	52.10	302.0	46.80	7.0	1.10	28.00	88.00	4.00	12.00
76	COLUMBIA	222.0	32.90	445.0	66.00	7.0	1.00	26.00	87.00	4.00	13.00
77	COLUMBIA	135.0	20.50	520.0	79.20	2.0	0.30	27.00	82.00	6.00	18.00
78	COLUMBIA	54.0	7.20	685.0	91.70	8.0	1.10	29.00	81.00	7.00	19.00
79	COLUMBIA	26.0	3.50	713.0	96.00	4.0	0.50	28.00	78.00	8.00	22.00
80	COLUMBIA	17.0	2.30	725.0	97.10	5.0	0.70	30.00	79.00	8.00	21.00
81	COLUMBIA	12.0	1.70	696.0	97.50	6.0	0.80	25.38	71.00	10.12	29.00
82	COLUMBIA	7.0	1.00	684.0	98.70	2.0	0.30	25.00	74.00	8.62	26.00
83	COLUMBIA	6.0	0.90	675.0	98.70	3.0	0.40	22.75	70.00	9.75	30.00
84	COLUMBIA	7.0	1.10	633.0	98.60	2.0	0.30	21.00	64.60	11.50	35.40
85	COLUMBIA	9.0	1.40	648.0	97.90	5.0	0.70	23.00	70.80	9.50	29.20
86	COLUMBIA	8.0	1.20	648.0	98.30	3.0	0.50	22.00	64.70	12.00	35.30

ELEMENTARY SCHOOLS, ALL YEARS - CORALWOOD

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	CORALWOOD	344.0	93.20	25.0	6.80	0.0	0.00	15.00	94.00	1.00	6.00
70	CORALWOOD	312.0	91.50	29.0	8.50	0.0	0.00	16.00	100.00	0.00	0.00
71	CORALWOOD	286.0	93.20	20.0	6.50	1.0	0.30	15.00	100.00	0.00	0.00
72	CORALWOOD	279.0	93.60	14.0	4.70	5.0	1.70	16.00	94.10	1.00	5.90
73	CORALWOOD	249.0	91.90	16.0	5.90	6.0	2.20	14.00	93.00	1.00	7.00

ELEMENTARY SCHOOL, ALL YEARS - DORAVILLE

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	DORAVILLE	224.0	89.60	24.0	9.60	2.0	0.80	15.00	100.00	0.00	0.00
70	DORAVILLE	257.0	92.40	17.0	6.10	4.0	1.50	14.00	93.30	1.00	6.70
71	DORAVILLE	199.0	93.00	13.0	6.10	2.0	0.90	17.00	94.00	1.00	6.00

ELEMENTARY SCHOOLS, ALL YEARS - DRESDEN

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	DRESDEN	887.0	100.00	0.0	0.00	0.0	0.00	30.00	94.00	2.00	6.00
70	DRESDEN	774.0	99.50	1.0	0.10	3.0	0.40	32.00	94.10	2.00	5.90
71	DRESDEN	759.0	98.80	0.0	0.00	9.0	1.20	29.00	94.00	2.00	6.00
72	DRESDEN	720.0	98.10	0.0	0.00	14.0	1.90	29.00	93.50	2.00	6.50
73	DRESDEN	650.0	97.60	4.0	0.60	12.0	1.80	28.00	93.00	2.00	7.00
74	DRESDEN	653.0	96.60	5.0	0.70	18.0	2.70	30.00	97.00	1.00	3.00
75	DRESDEN	586.0	95.30	7.0	1.10	22.0	3.60	27.00	93.00	2.00	7.00
76	DRESDEN	596.0	97.40	3.0	0.50	13.0	2.10	25.00	89.00	3.00	11.00
77	DRESDEN	598.0	96.80	5.0	0.80	15.0	2.40	24.00	86.00	4.00	14.00
78	DRESDEN	556.0	95.50	12.0	2.10	14.0	2.40	22.00	79.00	6.00	21.00
79	DRESDEN	505.0	90.00	26.0	4.60	30.0	5.40	21.50	75.00	7.00	25.00
80	DRESDEN	444.0	86.20	36.0	7.00	35.0	6.80	21.50	75.00	7.00	25.00
81	DRESDEN	404.0	83.30	44.0	9.10	37.0	7.70	20.25	77.00	6.00	23.00
82	DRESDEN	349.0	79.90	37.0	8.50	51.0	11.60	19.00	76.00	6.00	24.00
83	DRESDEN	457.0	71.50	84.0	13.10	98.0	15.30	25.50	78.00	7.00	22.00
84	DRESDEN	409.0	69.80	121.0	19.40	92.0	14.80	23.50	77.00	7.00	23.00
85	DRESDEN	368.0	68.30	156.0	24.70	107.0	17.00	33.50	73.30	9.00	27.70
86	DRESDEN	306.0	46.60	226.0	34.50	124.0	18.90	21.00	65.60	11.00	34.40

PAGE: 27

ELEMENTARY SCHOOLS, ALL YEARS - DUNAIRE

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	DUNAIRE	350.0	98.90	2.0	0.60	2.0	0.60	20.00	100.00	0.00	0.00
70	DUNAIRE	340.0	99.40	0.0	0.00	2.0	0.60	19.00	95.00	1.00	5.00
71	DUNAIRE	435.0.	99.80	0.0	0.00	1.0	0.20	24.00	96.00	1.00	4.00
72	DUNAIRE	584.0	99.50	1.0	0.20	2.0	0.40	27.00	96.40	1.00	3.60
73	DUNAIRE	593.0	99.20	2.0	0.30	3.0	0.50	26.00	93.00	2.00	7.00
74	DUNAIRE	500.0	98.00	6.0	1.20	4.0	0.90	25.00	96.00	1.00	4.00
75	DUNAIRE	500.0	98.80	4.0	0.80	2.0	0.40	24.00	92.00	2.00	8.00
76	DUNAIRE	502.0	98.80	5.0	1.00	1.0	0.20	22.00	88.00	3.00	12.00
77	DUNAIRE	484.0	45.70	6.0	1.20	16.0	3.10	21.00	84.00	4.00	16.00
78	DUNAIRE	456.0	93.60	13.0	2.70	18.0	3.70	20.00	83.00	4.00	17.00
79	DUNAIRE	428.0	92.60	17.0	3.70	17.0	3.70	21.50	84.00	4.00	16.00
80	DUNAIRE	403.0	89.20	28.0	6.20	21.0	4.60	22.00	80.00	5.50	20.00
81	DUNAIRE	362.0	89.60	25.0	6.20	17.0	4.10	17.75	78.00	5.00	22.00
82	DUNAIRE	318.0	82.20	49.0	12.70	20.0	5.20	17.62	78.00	5.00	22.00
83	DUNAIRE	302.0	69.60	100.0	23.00	32.0	7.40	18.00	75.00	6.00	25.00
84	DUNAIRE	321.0	66.70	123.0	25.60	37.0	7.70	19.25	76.20	6.00	23.80
85	DUNAIRE	278.0	61.40	135.0	29.80	40.0	8.80	19.00	76.00	6.00	24.00
86	DUNAIRE	261.0	48.20	225.0	41.60	55.0	10.20	20.00	71.40	8.00	28.60

PAGE: 28

ELEMENTARY SCHOOLS, ALL YEARS - DUNWOODY

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	DUNWOODY	1,053.0	99.80	0.0	0.00	2.0	0.20	41.00	98.00	1.00	2.00
70	DUNWOODY	948.0	99.80	0.0	0.00	2.0	0.20	35.00	94.60	2.00	5.40
71	DUNWOODY	935.0	100.00	0.0	0.00	0.0	0.00	38.00	97.00	1.00	3.00
72	DUNWOODY	823.0	99.40	0.0	0.00	5.0	0.60	35.00	97.00	1.00	3.00
73	DUNWOODY	910.0	99.00	2.0	0.20	7.0	0.80	30.00	88.00	4.00	12.00
74	DUNWOODY	978.0	99.20	1.0	0.10	7.0	0.70	46.00	98.00	1.00	2.00
75	DUNWOODY	659.0	99.40	0.0	0.00	4.0	0.70	32.00	94.00	2.00	6.00
76	DUNWOODY	715.0	98.90	0.0	0.00	8.0	1.10	31.00	89.00	4.00	11.00
77	DUNWOODY	745.0	99.10	1.0	0.10	6.0	0.80	31.00	84.00	6.00	16.00
78	DUNWOODY	733.0	99.10	0.0	0.00	7.0	1.00	27.00	82.00	6.00	18.00
79	DUNWOODY	717.0	98.40	1.0	0.10	11.0	1.50	29.50	81.00	7.00	19.00
80	DUNWOODY	700.0	98.20	2.0	0.30	11.0	1.50	29.50	81.00	7.00	19.00
81	DUNWOODY	631.0	97.10	5.0	0.80	14.0	2.20	24.50	75.00	8.00	25.00
82	DUNWOODY	572.0	95.00	10.0	1.70	20.0	3.30	23.50	77.00	7.00	23.00
83	DUNWOODY	506.0	93.20	19.0	3.50	18.0	3.30	22.25	81.00	6.00	19.00
84	DUNWOODY	425.0	92.20	15.0	3.30	21.0	4.50	19.50	76.40	6.00	23.60

ELEMENTARY SCHOOLS, ALL YEARS - EVANSDALE

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	EVANSDALE	711.0	99.90	0.0	0.00	1.0	0.10	26.00	96.00	1.00	4.00
70	EVANSDALE	787.0	99.87	0.0	0.00	1.0	0.13	33.00	97.10	1.00	2.90
71	EVANSDALE	695.0	99.86	0.0	0.00	1.0	0.14	28.00	97.00	1.00	3.00
72	EVANSDALE	685.0	99.90	0.0	0.00	1.0	0.10	28.00	97.00	1.00	3.00
73	EVANSDALE	660.0	100.00	0.0	0.00	0.0	0.00	26.00	93.00	2.00	7.00
74	EVANSDALE	602.0	99.80	0.0	0.00	1.0	0.20	27.00	96.00	1.00	4.00
75	EVANSDALE	517.0	100.00	0.0	0.00	0.0	0.00	25.00	89.00	3.00	11.00
76	EVANSDALE	463.0	99.40	0.0	0.00	3.0	0.60	21.00	88.00	3.00	12.00
77	EVANSDALE	440.0	99.30	0.0	0.00	3.0	0.70	21.00	88.00	3.00	12.00
78	EVANSDALE	421.0	99.80	0.0	0.00	1.0	0.20	20.00	83.00	4.00	17.00
79	EVANSDALE	427.0	97.50	0.0	0.00	11.0	2.50	20.00	80.00	5.00	20.00
80	EVANSDALE	382.0	95.70	2.0	0.50	15.0	3.80	21.00	81.00	5.00	19.00
81	EVANSDALE	344.0	94.80	1.0	0.30	18.0	5.00	17.25	79.00	4.50	21.00
82	EVANSDALE	329.0	95.10	0.0	0.00	17.0	4.90	16.50	79.00	4.50	21.00
83	EVANSDALE	345.0	95.00	0.0	0.00	18.0	5.00	16.25	75.00	5.50	25.00
84	EVANSDALE	279.0	92.10	0.0	0.00	24.0	7.90	16.00	78.00	4.50	22.00
85	EVANSDALE	271.0	88.50	6.0	2.00	29.0	9.50	15.50	77.50	4.50	22.50
86	EVANSDALE	275.0	86.80	10.0	3.20	32.0	10.10	15.00	73.20	5.50	26.80

ELEMENTARY SCHOOL, ALL YEARS - FAIRINGTON

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
75	FAIRINGTON	541.0	93.90	34.0	5.90	1.0	0.20	24.00	89.00	3.00	11.00
76	FAIRINGTON	534.0	92.70	39.0	6.80	3.0	0.50	22.00	88.00	3.00	12.00
77	FAIRINGTON	575.0	88.90	66.0	10.20	6.0	0.90	23.00	86.00	4.00	15.00
78	FAIRINGTON	571.0	86.80	75.0	11.40	12.0	1.80	25.00	81.00	6.00	19.00
79	FAIRINGTON	534.0	78.60	132.0	19.40	13.0	1.90	25.50	80.00	6.50	20.00
80	FAIRINGTON	522.0	66.30	249.0	31.60	16.0	2.00	26.00	76.00	8.00	24.00
81	FAIRINGTON	492.0	61.30	293.0	36.50	18.0	2.20	27.25	75.00	9.00	25.00
82	FAIRINGTON	425.0	53.00	361.0	45.00	16.0	2.00	29.88	78.00	8.37	22.00
83	FAIRINGTON	329.0	42.30	428.0	55.10	21.0	2.60	27.00	74.00	9.50	26.00
84	FAIRINGTON	264.0	36.90	433.0	60.50	19.0	2.60	26.75	75.90	8.50	24.10
85	FAIRINGTON	225.0	28.80	535.0	68.40	22.0	2.80	28.00	72.70	10.50	27.30
86	FAIRINGTON	159.0	19.00	656.0	78.60	20.0	2.40	28.00	71.80	11.00	28.20

ELEMENTARY SCHOOLS, ALL YEARS - FERNBANK

YEAR	SCHOOL	STUDENTS WHITE NO.	STUDENTS WHITE %	STUDENTS BLACK NO.	STUDENTS BLACK %	STUDENTS OTHER NO.	STUDENTS OTHER %	FACULTY WHITE NO.	FACULTY WHITE %	FACULTY BLACK NO.	FACULTY BLACK %
69	FERNBANK	810.0	99.00	3.0	0.40	5.0	0.60	30.00	97.00	1.00	3.00
70	FERNBANK	801.0	99.10	0.0	0.00	7.0	0.90	31.00	96.90	1.00	3.10
71	FERNBANK	719.0	99.90	0.0	0.00	1.0	0.10	28.00	97.00	1.00	3.00
72	FERNBANK	695.0	98.30	0.0	0.00	12.0	1.70	30.00	97.00	1.00	3.00
73	FERNBANK	673.0	97.80	0.0	0.00	15.0	2.20	24.00	92.00	2.00	8.00
74	FERNBANK	617.0	97.80	3.0	0.50	11.0	1.80	29.00	97.00	1.00	3.00
75	FERNBANK	639.0	95.40	18.0	2.70	13.0	1.90	28.00	90.00	3.00	10.00
76	FERNBANK	630.0	93.30	29.0	4.30	16.0	2.40	28.00	88.00	4.00	12.00
77	FERNBANK	586.0	87.40	66.0	9.90	18.0	2.70	28.00	85.00	5.00	15.00
78	FERNBANK	543.0	76.50	151.0	21.30	16.0	2.20	30.00	83.00	6.00	17.00
79	FERNBANK	496.0	64.80	244.0	31.90	26.0	3.40	28.50	80.00	7.00	20.00
80	FERNBANK	449.0	64.60	223.0	32.10	23.0	3.30	28.50	80.00	7.00	20.00
81	FERNBANK	414.0	64.50	212.0	33.00	16.0	2.50	24.50	75.00	8.00	25.00
82	FERNBANK	415.0	60.50	249.0	36.30	22.0	3.20	24.50	75.00	8.00	25.00
83	FERNBANK	342.0	56.40	237.0	39.10	27.0	4.40	22.75	74.00	8.00	26.00
84	FERNBANK	316.0	52.50	264.0	43.80	22.0	3.70	22.50	73.80	8.00	26.20
85	FERNBANK	284.0	47.60	302.0	49.80	16.0	2.60	22.25	71.20	9.00	28.80
86	FERNBANK	29	52.80	252.0	44.80	13.0	2.30	19.00	67.90	9.00	32.10

ELEMENTARY SCHOOL, ALL YEARS - FLAT SHOALS

YEAR	SCHOOL	STUDENTS WHITE NO.	STUDENTS WHITE %	STUDENTS BLACK NO.	STUDENTS BLACK %	STUDENTS OTHER NO.	STUDENTS OTHER %	FACULTY WHITE NO.	FACULTY WHITE %	FACULTY BLACK NO.	FACULTY BLACK %
69	FLAT SHOALS	579.0	99.80	0.0	0.00	1.0	0.20	21.00	91.00	2.00	9.00
70	FLAT SHOALS	557.0	99.80	0.0	0.00	1.0	0.20	22.00	91.70	2.00	8.30
71	FLAT SHOALS	618.0	99.50	1.0	0.20	2.0	0.30	26.00	93.00	2.00	7.00
72	FLAT SHOALS	620.0	95.20	29.0	4.50	2.0	0.30	27.00	90.00	3.00	10.00
73	FLAT SHOALS	407.0	66.40	202.0	33.00	4.0	0.70	25.00	86.00	4.00	14.00
74	FLAT SHOALS	268.0	44.50	331.0	55.00	3.0	0.50	25.00	86.00	4.00	14.00
75	FLAT SHOALS	196.0	31.20	411.0	68.50	2.0	0.30	27.00	87.00	4.00	13.00
76	FLAT SHOALS	115.0	16.20	591.0	83.10	5.0	0.70	28.00	88.00	4.00	12.00
77	FLAT SHOALS	54.0	6.50	764.0	92.40	9.0	1.10	29.00	83.00	6.00	17.00
78	FLAT SHOALS	15.0	2.00	748.0	98.00	0.0	0.00	28.00	78.00	8.00	22.00
79	FLAT SHOALS	9.0	1.20	749.0	97.90	7.0	0.90	29.00	78.00	8.00	22.00
80	FLAT SHOALS	2.0	0.20	791.0	98.90	7.0	0.90	30.00	77.00	9.00	23.00
81	FLAT SHOALS	3.0	0.40	755.0	99.30	2.0	0.30	29.38	76.00	9.37	24.00
82	FLAT SHOALS	3.0	0.40	719.0	99.40	1.0	0.10	24.37	67.00	12.00	33.00
83	FLAT SHOALS	2.0	0.30	743.0	99.60	1.0	0.10	23.25	63.00	13.50	37.00
84	FLAT SHOALS	2.0	0.30	729.0	99.70	0.0	0.00	26.00	72.20	10.00	27.80
85	FLAT SHOALS	3.0	0.40	697.0	99.60	0.0	0.00	27.00	69.20	12.00	30.80
86	FLAT SHOALS	2.0	0.30	676.0	99.40	2.0	0.30	25.00	69.40	11.00	30.60

PAGE: 1

ELEMENTARY SCHOOLS, ALL YEARS - FORREST HILLS

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	FORREST HILLS	418.0	73.30	147.0	25.80	5.0	0.90	21.00	87.00	3.00	13.00
70	FORREST HILLS	360.0	76.10	107.0	22.60	6.0	1.30	22.00	91.70	2.00	8.30
71	FORREST HILLS	343.0	78.70	89.0	20.40	4.0	0.90	24.00	96.00	1.00	4.00
72	FORREST HILLS	332.0	78.30	88.0	20.80	4.0	0.90	24.00	96.00	1.00	4.00
73	FORREST HILLS	295.0	77.00	85.0	22.20	3.0	0.80	21.00	88.00	3.00	12.00
74	FORREST HILLS	263.0	73.70	91.0	25.50	3.0	0.80	23.00	92.00	2.00	8.00
75	FORREST HILLS	222.0	72.20	82.0	27.20	2.0	0.60	23.00	85.00	4.00	15.00
76	FORREST HILLS	230.0	73.00	83.0	26.30	2.0	0.60	17.50	81.00	4.00	19.00
77	FORREST HILLS	190.0	77.20	52.0	21.20	4.0	1.60	24.00	89.00	3.00	11.00
78	FORREST HILLS	193.0	73.90	64.0	24.50	4.0	1.50	23.00	85.00	4.00	15.00
79	FORREST HILLS	170.0	72.30	62.0	26.40	3.0	1.30	23.50	85.00	4.00	15.00
80	FORREST HILLS	145.0	69.40	62.0	29.70	2.0	1.00	12.00	86.00	2.00	14.00
81	FORREST HILLS	122.0	59.50	78.0	38.00	5.0	2.40	11.25	76.00	3.50	24.00
82	FORREST HILLS	115.0	59.30	72.0	37.10	7.0	3.60	12.50	77.00	3.75	23.00
83	FORREST HILLS	105.0	58.30	68.0	37.80	7.0	3.90	10.00	73.00	3.75	27.00
84	FORREST HILLS	89.0	50.80	78.0	44.60	8.0	4.60	10.50	75.00	3.50	25.00
85	FORREST HILLS	106.0	44.20	112.0	46.70	22.0	9.20	13.00	81.30	3.00	18.70
86	FORREST HILLS	102.0	46.40	94.0	42.70	24.0	10.90	12.00	70.60	5.00	29.40

PAGE: 2

ELEMENTARY SCHOOLS, ALL YEARS - GLEN HAVEN

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	GLEN HAVEN	545.0	97.50	12.0	2.10	2.0	0.40	22.00	96.00	1.00	4.00
70	GLEN HAVEN	523.0	98.10	9.0	1.70	1.0	0.20	22.00	91.70	2.00	8.30
71	GLEN HAVEN	491.0	98.20	8.0	1.60	1.0	0.20	21.00	91.00	2.00	9.00
72	GLEN HAVEN	452.0	97.80	8.0	1.70	2.0	0.40	20.00	83.00	4.00	17.00
73	GLEN HAVEN	418.0	97.20	6.0	1.40	6.0	1.30	18.00	82.00	4.00	18.00
74	GLEN HAVEN	395.0	95.00	13.0	3.10	8.0	1.90	24.00	92.00	2.00	8.00
75	GLEN HAVEN	384.0	90.40	30.0	7.10	11.0	2.60	23.00	88.00	3.00	12.00
76	GLEN HAVEN	364.0	86.30	38.0	9.00	20.0	4.70	20.50	84.00	4.00	16.00
77	GLEN HAVEN	327.0	89.30	26.0	7.10	13.0	3.60	21.00	84.00	4.00	16.00
78	GLEN HAVEN	296.0	79.00	59.0	15.70	20.0	5.30	22.00	85.00	4.00	15.00
79	GLEN HAVEN	248.0	74.00	68.0	20.00	21.0	6.00	20.00	80.00	5.00	20.00
80	GLEN HAVEN	193.0	60.30	91.0	28.40	36.0	11.20	20.00	83.00	4.00	17.00
81	GLEN HAVEN	177.0	56.90	89.0	28.60	45.0	14.40	15.50	79.00	4.00	21.00
82	GLEN HAVEN	156.0	52.50	85.0	28.60	56.0	18.80	14.00	76.00	4.50	24.00
83	GLEN HAVEN	174.0	54.90	97.0	30.00	46.0	14.50	14.00	72.00	5.50	28.00
84	GLEN HAVEN	138.0	44.70	110.0	35.60	61.0	19.70	13.50	71.10	5.50	28.90
85	GLEN HAVEN	126.0	38.70	139.0	42.60	61.0	18.70	13.50	67.50	6.50	32.50
86	GLEN HAVEN	88.0	25.90	180.0	52.90	72.0	21.20	15.00	75.00	5.00	25.00

PAGE: 39

ELEMENTARY SCHOOLS, ALL YEARS - GRESHAM PARK

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	GRESHAM PARK	572.0	100.00	0.0	0.00	0.0	0.00	22.00	96.00	1.00	4.00
70	GRESHAM PARK	572.0	100.00	0.0	0.00	0.0	0.00	24.00	96.00	1.00	4.00
71	GRESHAM PARK	508.0	98.40	8.0	1.60	0.0	0.00	24.00	86.00	4.00	14.00
72	GRESHAM PARK	376.0	76.90	113.0	23.10	0.0	0.00	19.00	73.00	7.00	27.00
73	GRESHAM PARK	202.0	39.00	315.0	60.80	1.0	0.20	20.00	74.00	7.00	26.00
74	GRESHAM PARK	116.0	20.00	464.0	79.90	1.0	0.10	19.00	66.00	10.00	34.00
75	GRESHAM PARK	61.0	9.90	556.0	89.80	2.0	0.30	15.00	52.00	14.00	48.00
76	GRESHAM PARK	26.0	3.70	668.0	95.70	4.0	0.60	18.00	51.00	17.00	49.00
77	GRESHAM PARK	12.0	1.60	736.0	98.00	3.0	0.40	27.00	69.00	12.00	31.00
78	GRESHAM PARK	10.0	1.30	770.0	98.60	1.0	0.10	29.00	73.00	11.00	27.00
79	GRESHAM PARK	10.0	1.40	702.0	98.20	5.0	0.40	24.00	65.00	13.00	35.00
80	GRESHAM PARK	10.0	1.30	746.0	98.20	4.0	0.50	30.00	75.00	10.00	25.00
81	GRESHAM PARK	11.0	1.50	733.0	98.30	2.0	0.30	27.88	76.00	8.62	24.00
82	GRESHAM PARK	14.0	1.90	712.0	97.70	3.0	0.40	25.38	70.00	11.12	30.00
83	GRESHAM PARK	6.0	1.40	420.0	97.40	5.0	1.20	18.25	65.00	10.00	35.00
84	GRESHAM PARK	7.0	1.30	531.0	98.20	3.0	0.50	17.50	61.40	11.00	38.60
85	GRESHAM PARK	3.0	0.60	533.0	98.90	3.0	0.60	20.00	61.50	12.50	38.50
86	GRESHAM PARK	5.0	0.90	536.0	98.00	6.0	1.10	17.00	56.70	13.00	43.30

PAGE: 40

ELEMENTARY SCHOOLS, ALL YEARS - HAMBRICK

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
71	HAMBRICK	649.0	100.00	0.0	0.00	0.0	0.00	25.00	93.00	2.00	7.00
72	HAMBRICK	800.0	100.00	0.0	0.00	0.0	0.00	31.00	94.00	2.00	6.00
73	HAMBRICK	806.0	99.90	0.0	0.00	1.0	0.10	36.00	92.00	3.00	8.00
74	HAMBRICK	796.0	100.00	0.0	0.00	0.0	0.00	33.00	97.00	1.00	3.00
75	HAMBRICK	605.0	99.70	0.0	0.00	2.0	0.30	28.00	93.00	2.00	7.00
76	HAMBRICK	642.0	99.80	0.0	0.00	1.0	0.20	28.00	90.00	3.00	10.00
77	HAMBRICK	597.0	99.80	0.0	0.00	1.0	0.20	26.00	84.00	5.00	16.00
78	HAMBRICK	584.0	98.80	3.0	0.50	4.0	0.80	26.00	84.00	5.00	16.00
79	HAMBRICK	521.0	97.60	4.0	0.70	9.0	1.60	24.00	83.00	5.00	17.00
80	HAMBRICK	492.0	98.00	1.0	0.20	9.0	1.80	22.50	82.00	5.00	18.00
81	HAMBRICK	435.0	97.10	3.0	0.70	10.0	2.20	18.00	73.00	6.50	27.00
82	HAMBRICK	459.0	96.80	7.0	1.50	8.0	1.70	18.00	73.00	6.50	27.00
83	HAMBRICK	444.0	93.10	19.0	4.00	14.0	2.90	18.50	74.00	6.50	26.00
84	HAMBRICK	410.0	89.90	32.0	7.00	14.0	3.10	18.00	75.00	6.00	25.00
85	HAMBRICK	363.0	79.80	71.0	15.60	21.0	4.60	17.75	74.70	6.00	25.30
86	HAMBRICK	386.0	65.40	178.0	30.20	26.0	4.40	24.00	77.40	7.00	22.60

PAGE: 41

ELEMENTARY SCHOOLS, ALL YEARS - HAWTHORNE

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	HAWTHORNE	732.0	99.86	0.0	0.00	1.0	0.14	26.00	93.00	2.00	7.00
70	HAWTHORNE	711.0	99.30	0.0	0.00	5.0	0.70	26.00	96.30	1.00	3.70
71	HAWTHORNE	651.0	99.20	0.0	0.00	5.0	0.80	28.00	97.00	1.00	3.00
72	HAWTHORNE	588.0	99.30	1.0	0.20	3.0	0.50	27.00	96.00	1.00	4.00
73	HAWTHORNE	536.0	99.80	0.0	0.00	1.0	0.20	24.00	96.00	1.00	4.00
74	HAWTHORNE	515.0	99.20	1.0	0.20	3.0	0.60	26.00	96.00	1.00	4.00
75	HAWTHORNE	447.0	99.10	1.0	0.20	3.0	0.70	25.00	93.00	2.00	7.00
76	HAWTHORNE	415.0	97.90	3.0	0.70	6.0	1.50	18.50	86.00	3.00	14.00
77	HAWTHORNE	394.0	97.30	3.0	0.70	8.0	1.90	20.00	87.00	3.00	13.00
78	HAWTHORNE	480.0	95.80	7.0	1.40	14.0	2.80	22.00	81.00	5.00	19.00
79	HAWTHORNE	417.0	93.90	5.0	1.10	22.0	5.00	21.00	81.00	5.00	19.00
80	HAWTHORNE	371.0	87.50	15.0	3.50	38.0	9.00	21.00	81.00	5.00	19.00
81	HAWTHORNE	318.0	89.80	12.0	3.40	24.0	6.80	16.25	77.00	5.00	23.00
82	HAWTHORNE	328.0	86.50	15.0	4.00	36.0	9.50	16.00	76.00	5.00	24.00
83	HAWTHORNE	252.0	82.40	20.0	6.60	32.0	10.60	14.25	72.00	5.50	28.00
84	HAWTHORNE	224.0	79.40	25.0	8.90	33.0	11.70	13.75	73.30	5.00	26.70
85	HAWTHORNE	221.0	81.30	25.0	9.20	26.0	9.50	13.50	73.00	5.00	27.00
86	HAWTHORNE	204.0	68.90	62.0	20.90	30.0	10.10	14.50	76.50	4.50	23.70

PAGE: 42

ELEMENTARY SCHOOLS, ALL YEARS - HENDERSON MILL

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	HENDERSON MILL	651.0	100.00	0.0	0.00	0.0	0.00	29.00	97.00	1.00	3.00
70	HENDERSON MILL	687.0	99.90	0.0	0.00	1.0	0.10	28.00	96.60	1.00	3.40
71	HENDERSON MILL	669.0	99.90	0.0	0.00	1.0	0.10	31.00	97.00	1.00	3.00
72	HENDERSON MILL	580.0	99.70	0.0	0.00	2.0	0.30	26.00	96.00	1.00	4.00
73	HENDERSON MILL	551.0	99.30	0.0	0.00	4.0	0.70	23.00	92.00	2.00	8.00
74	HENDERSON MILL	505.0	99.40	0.0	0.00	3.0	0.60	28.00	97.00	1.00	3.00
75	HENDERSON MILL	477.0	98.80	0.0	0.00	6.0	1.20	27.00	93.00	2.00	7.00
76	HENDERSON MILL	483.0	99.20	0.0	0.00	4.0	0.80	29.00	91.00	3.00	9.00
77	HENDERSON MILL	435.0	99.30	0.0	0.00	3.0	0.70	26.00	90.00	3.00	10.00
78	HENDERSON MILL	398.0	99.30	0.0	0.00	3.0	0.70	24.00	86.00	4.00	14.00
79	HENDERSON MILL	356.0	98.10	2.0	0.60	5.0	1.40	22.50	85.00	4.00	15.00
80	HENDERSON MILL	332.0	94.90	9.0	2.60	9.0	2.60	15.50	79.00	4.00	21.00
81	HENDERSON MILL	304.0	93.20	13.0	4.00	9.0	2.80	15.50	78.00	4.50	22.00
82	HENDERSON MILL	291.0	87.90	31.0	9.40	9.0	2.70	16.00	78.00	4.50	22.00
83	HENDERSON MILL	308.0	79.00	60.0	15.40	22.0	5.70	17.25	76.00	5.50	24.00
84	HENDERSON MILL	296.0	75.40	71.0	18.00	26.0	6.60	17.00	75.50	5.50	24.50
85	HENDERSON MILL	297.0	74.80	80.0	20.20	20.0	5.00	17.25	72.60	6.50	27.40
86	HENDERSON MILL	297.0	65.30	125.0	27.50	33.0	7.30	18.50	77.10	5.50	22.90

PAGE: 43

ELEMENTARY SCHOOLS, ALL YEARS - HERITAGE

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	HERITAGE	513.0	100.00	0.0	0.00	0.0	0.00	20.00	95.00	1.00	5.00
70	HERITAGE	441.0	100.00	0.0	0.00	0.0	0.00	19.00	95.00	1.00	5.00
71	HERITAGE	432.0	100.00	0.0	0.00	0.0	0.00	19.00	95.00	1.00	5.00
72	HERITAGE	378.0	100.00	0.0	0.00	0.0	0.00	18.00	95.00	1.00	5.00
73	HERITAGE	328.0	99.70	0.0	0.00	1.0	0.30	15.00	88.00	2.00	12.00
74	HERITAGE	359.0	99.40	0.0	0.00	2.0	0.60	18.00	95.00	1.00	5.00
75	HERITAGE	318.0	99.40	0.0	0.00	2.0	0.60	18.00	86.00	3.00	14.00
76	HERITAGE	312.0	96.00	2.0	0.60	11.0	3.30	14.50	78.00	4.00	22.00
77	HERITAGE	287.0	93.80	18.0	5.90	1.0	0.30	16.00	84.00	3.00	16.00

PAGE: 44

ELEMENTARY SCHOOLS, ALL YEARS - HIGHTOWER

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	HIGHTOWER	731.0	98.90	8.0	1.10	0.0	0.00	29.00	100.00	0.00	0.00
70	HIGHTOWER	903.0	99.00	9.0	1.00	0.0	0.00	33.00	97.10	1.00	2.90
71	HIGHTOWER	804.0	97.70	17.0	2.10	2.0	0.20	31.00	94.00	2.00	6.00
72	HIGHTOWER	884.0	97.70	18.0	2.00	3.0	0.30	35.00	95.00	2.00	5.00
73	HIGHTOWER	607.0	96.00	20.0	3.20	5.0	0.80	27.00	93.00	2.00	7.00
74	HIGHTOWER	741.0	95.70	23.0	3.00	10.0	1.30	33.00	94.00	2.00	6.00
75	HIGHTOWER	705.0	95.90	17.0	2.30	13.0	1.70	32.00	91.00	3.00	9.00
76	HIGHTOWER	689.0	94.90	22.0	3.00	15.0	2.00	31.00	89.00	4.00	11.00
77	HIGHTOWER	646.0	94.30	20.0	2.90	19.0	2.70	28.00	85.00	5.00	15.00
78	HIGHTOWER	663.0	91.70	42.0	5.80	18.0	2.50	29.00	83.00	6.00	17.00
79	HIGHTOWER	626.0	90.60	44.0	6.40	21.0	3.10	28.50	83.00	6.00	17.00
80	HIGHTOWER	585.0	87.70	62.0	9.30	20.0	2.90	28.50	83.00	6.00	17.00
81	HIGHTOWER	533.0	85.10	57.0	9.10	36.0	5.80	26.00	81.00	6.00	19.00
82	HIGHTOWER	462.0	83.20	62.0	11.20	31.0	14.60	22.00	79.00	6.00	21.00
83	HIGHTOWER	299.0	84.00	43.0	12.10	14.0	3.90	15.25	75.00	5.00	25.00
84	HIGHTOWER	233.0	78.70	49.0	16.60	14.0	4.70	15.00	78.90	4.00	21.10
85	HIGHTOWER	237.0	74.50	58.0	18.20	23.0	7.20	16.50	84.60	3.00	15.40
86	HIGHTOWER	208.0	59.90	106.0	30.50	33.0	9.50	18.00	85.70	3.00	14.30

PAGE: 45

ELEMENTARY SCHOOLS, ALL YEARS - HOOPER ALEXANDER

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	HOOPER ALEXANDER	408.0	71.80	160.0	28.20	0.0	0.00	21.00	78.00	6.00	22.00
70	HOOPER ALEXANDER	373.0	62.70	219.0	36.80	3.0	0.50	24.00	82.80	5.00	17.20
71	HOOPER ALEXANDER	298.0	52.00	272.0	47.50	3.0	0.50	20.00	71.00	8.00	29.00
72	HOOPER ALEXANDER	218.0	36.20	383.0	63.60	1.0	0.20	22.00	71.00	9.00	29.00
73	HOOPER ALEXANDER	175.0	28.90	429.0	70.90	1.0	0.20	21.00	70.00	9.00	30.00
74	HOOPER ALEXANDER	123.0	22.30	427.0	77.50	1.0	0.20	20.00	63.00	12.00	37.00
75	HOOPER ALEXANDER	105.0	20.30	412.0	79.50	1.0	0.20	18.00	62.00	11.00	38.00
76	HOOPER ALEXANDER	94.0	17.50	441.0	82.30	1.0	0.20	18.00	64.00	10.00	36.00
77	HOOPER ALEXANDER	62.0	13.60	393.0	86.20	1.0	0.20	20.00	71.00	8.00	29.00
78	HOOPER ALEXANDER	76.0	14.70	438.0	84.70	3.0	0.60	21.00	75.00	7.00	25.00
79	HOOPER ALEXANDER	67.0	14.30	396.0	84.40	6.0	1.30	19.00	73.00	7.00	27.00
80	HOOPER ALEXANDER	56.0	12.10	402.0	86.60	6.0	1.30	20.00	74.00	7.00	26.00
81	HOOPER ALEXANDER	45.0	9.90	397.0	87.30	13.0	2.80	17.00	69.00	7.50	31.00
82	HOOPER ALEXANDER	39.0	8.90	385.0	88.10	13.0	3.00	17.00	69.00	7.50	31.00
83	HOOPER ALEXANDER	25.0	5.80	386.0	89.60	20.0	4.60	16.50	71.00	6.75	29.00
84	HOOPER ALEXANDER	29.0	6.70	399.0	91.50	8.0	1.80	18.75	70.10	8.00	29.90
85	HOOPER ALEXANDER	25.0	4.60	480.0	91.40	20.0	3.80	19.75	68.70	9.00	31.30
86	HOOPER ALEXANDER	20.0	4.30	440.0	94.00	8.0	1.70	18.00	64.30	10.00	35.70

PAGE: 46

ELEMENTARY SCHOOLS, ALL YEARS - HUNTLEY HILLS

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	HUNTLEY HILLS	821.0	90.90	73.0	8.10	9.0	1.00	34.00	97.00	1.00	3.00
70	HUNTLEY HILLS	720.0	91.00	67.0	8.50	4.0	0.50	30.00	96.80	1.00	3.20
71	HUNTLEY HILLS	584.0	91.70	50.0	7.80	3.0	0.50	27.00	96.00	1.00	4.00
72	HUNTLEY HILLS	745.0	93.40	46.0	5.80	7.0	0.90	33.00	97.00	1.00	3.00
73	HUNTLEY HILLS	577.0	93.70	37.0	6.00	2.0	0.30	26.00	93.00	2.00	7.00
74	HUNTLEY HILLS	518.0	93.30	36.0	6.50	1.0	0.20	31.00	97.00	1.00	3.00
75	HUNTLEY HILLS	573.0	91.80	46.0	7.40	5.0	0.80	32.00	94.00	2.00	6.00
76	HUNTLEY HILLS	563.0	92.50	38.0	6.30	7.0	1.20	25.00	89.00	3.00	11.00
77	HUNTLEY HILLS	465.0	92.40	30.0	6.00	8.0	1.60	23.00	85.00	4.00	15.00
78	HUNTLEY HILLS	434.0	90.80	37.0	7.70	7.0	1.40	20.00	83.00	4.00	17.00
79	HUNTLEY HILLS	394.0	90.80	28.0	6.40	12.0	2.80	20.50	84.00	4.00	16.00
80	HUNTLEY HILLS	380.0	85.60	40.0	9.00	24.0	5.40	20.50	80.00	5.00	20.00
81	HUNTLEY HILLS	302.0	82.50	47.0	12.80	17.0	4.70	16.25	76.00	5.00	24.00
82	HUNTLEY HILLS	257.0	77.90	57.0	17.30	16.0	4.80	14.37	74.00	5.00	26.00
83	HUNTLEY HILLS	245.0	78.30	51.0	16.30	17.0	5.40	15.00	75.00	5.00	25.00
84	HUNTLEY HILLS	218.0	75.70	50.0	17.40	20.0	6.90	13.75	75.30	4.50	24.70
85	HUNTLEY HILLS	242.0	77.30	52.0	16.60	19.0	6.10	14.50	72.50	5.50	27.50
86	HUNTLEY HILLS	214.0	71.60	62.0	20.70	23.0	7.70	14.00	70.00	6.00	30.00

ELEMENTARY SCHOOLS, ALL YEARS - IDLEWOOD

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	IDLEWOOD	670.0	95.00	28.0	4.00	6.0	1.00	26.00	84.00	5.00	16.00
70	IDLEWOOD	746.0	96.90	14.0	1.80	10.0	1.30	30.00	88.20	4.00	11.80
71	IDLEWOOD	730.0	96.70	19.0	2.50	6.0	0.80	30.00	94.00	2.00	6.00
72	IDLEWOOD	708.0	97.10	15.0	2.10	6.0	0.80	30.00	94.00	2.00	6.00
73	IDLEWOOD	744.0	97.10	19.0	2.50	3.0	0.40	30.00	94.00	2.00	6.00
74	IDLEWOOD	751.0	97.20	18.0	2.30	4.0	0.50	31.00	94.00	2.00	6.00
75	IDLEWOOD	734.0	96.70	17.0	2.20	8.0	1.00	31.00	94.00	2.00	6.00
76	IDLEWOOD	700.0	96.80	18.0	2.50	5.0	0.60	31.00	91.00	3.00	9.00
77	IDLEWOOD	659.0	96.60	18.0	2.60	5.0	0.70	28.00	88.00	4.00	12.00
78	IDLEWOOD	645.0	94.20	30.0	4.40	10.0	1.40	27.00	82.00	6.00	18.00
79	IDLEWOOD	599.0	91.00	36.0	5.50	23.0	3.60	26.50	82.00	6.00	18.00
80	IDLEWOOD	551.0	90.90	35.0	5.80	20.0	3.30	26.50	82.00	6.00	18.00
81	IDLEWOOD	467.0	91.60	20.0	3.90	23.0	4.50	21.00	80.00	5.25	20.00
82	IDLEWOOD	399.0	89.70	33.0	7.40	13.0	2.90	19.00	79.00	5.00	21.00
83	IDLEWOOD	372.0	85.90	42.0	9.70	19.0	4.50	18.00	75.00	6.00	25.00
84	IDLEWOOD	352.0	83.60	43.0	10.20	26.0	6.20	18.50	75.50	6.00	24.50
85	IDLEWOOD	332.0	78.80	63.0	15.00	26.0	6.20	19.50	76.50	6.00	23.50
86	IDLEWOOD	348.0	79.80	80.0	19.60	31.0	6.60	19.00	76.00	6.00	24.00

ELEMENTARY SCHOOLS, ALL YEARS - INDIAN CREEK

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	INDIAN CREEK	611.0	78.50	166.0	21.30	1.0	0.10	28.00	88.00	4.00	12.00
70	INDIAN CREEK	657.0	80.30	160.0	19.60	1.0	0.10	30.00	88.20	4.00	11.80
71	INDIAN CREEK	763.0	85.80	126.0	14.20	0.0	0.00	33.00	89.00	4.00	11.00
72	INDIAN CREEK	684.0	88.00	91.0	11.70	2.0	0.30	29.00	83.00	6.00	17.00
73	INDIAN CREEK	778.0	89.40	87.0	9.90	6.0	0.70	30.00	83.00	6.00	17.00
74	INDIAN CREEK	602.0	84.40	106.0	14.90	5.0	0.70	30.00	91.00	3.00	9.00
75	INDIAN CREEK	585.0	82.50	111.0	15.70	13.0	1.80	31.00	94.00	3.00	6.00
76	INDIAN CREEK	626.0	83.40	115.0	15.30	10.0	1.20	31.00	89.00	4.00	11.00
77	INDIAN CREEK	586.0	82.00	112.0	15.70	17.0	2.40	29.00	85.00	5.00	15.00
78	INDIAN CREEK	619.0	82.90	122.0	16.40	15.0	0.70	30.00	81.00	7.00	19.00
79	INDIAN CREEK	528.0	74.80	156.0	22.10	22.0	3.00	29.50	81.00	7.00	19.00
80	INDIAN CREEK	487.0	68.70	189.0	26.70	33.0	4.70	28.50	78.00	8.00	22.00
81	INDIAN CREEK	394.0	62.20	198.0	31.30	41.0	6.50	24.25	76.00	7.75	24.00
82	INDIAN CREEK	350.0	57.00	203.0	33.00	61.0	10.00	24.50	75.00	8.00	25.00
83	INDIAN CREEK	341.0	52.10	236.0	36.10	77.0	11.80	24.25	75.00	8.00	25.00
84	INDIAN CREEK	295.0	44.00	284.0	42.30	92.0	13.70	23.75	72.50	9.00	27.50
85	INDIAN CREEK	225.0	35.00	321.0	49.90	97.0	15.10	24.25	70.80	10.00	29.20
86	INDIAN CREEK	168.0	26.40	362.0	56.90	106.0	16.70	22.00	71.00	9.00	29.00

ELEMENTARY SCHOOLS, ALL YEARS - JIM CHERRY

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	JIM CHERRY	311.0	78.80	124.0	28.20	4.0	0.90	24.00	96.00	1.00	4.00
70	JIM CHERRY	293.0	68.90	126.0	29.60	6.0	1.40	23.00	88.50	3.00	11.50
71	JIM CHERRY	278.0	68.80	117.0	29.00	9.0	2.10	20.00	91.00	2.00	9.00
72	JIM CHERRY	210.0	59.70	128.0	36.40	14.0	4.00	14.00	77.80	4.00	22.20
73	JIM CHERRY	185.0	59.30	116.0	37.50	8.0	2.60	12.00	75.00	4.00	25.00
74	JIM CHERRY	163.0	56.00	121.0	41.60	7.0	2.40	17.00	85.00	3.00	15.00

ELEMENTARY SCHOOLS, ALL YEARS - JOLLY

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	JOLLY	921.0	100.00	0.0	0.00	0.0	0.00	32.00	91.00	3.00	9.00
70	JOLLY	1,030.0	100.00	0.0	0.00	0.0	0.00	33.00	91.70	3.00	8.30
71	JOLLY	812.0	99.90	1.0	0.10	0.0	0.00	32.00	97.00	1.00	3.00
72	JOLLY	872.0	99.90	1.0	0.10	0.0	0.00	35.00	97.00	1.00	3.00
73	JOLLY	912.0	100.00	0.0	0.00	0.0	0.00	33.00	92.00	3.00	8.00
74	JOLLY	851.0	99.20	0.0	0.00	7.0	0.80	36.00	97.00	1.00	3.00
75	JOLLY	759.0	99.00	3.0	0.40	5.0	0.70	33.00	94.00	2.00	6.00
76	JOLLY	679.0	97.60	8.0	1.10	9.0	1.30	30.00	91.00	3.00	9.00
77	JOLLY	616.0	97.20	6.0	0.90	12.0	1.80	26.00	87.00	4.00	13.00
78	JOLLY	613.0	92.90	28.0	4.20	19.0	3.00	26.00	84.00	5.00	16.00
79	JOLLY	564.0	95.30	14.0	2.40	14.0	2.40	24.50	80.00	6.00	20.00
80	JOLLY	486.0	90.50	26.0	4.80	25.0	4.60	23.50	80.00	6.00	20.00
81	JOLLY	521.0	90.40	35.0	6.10	20.0	3.50	21.00	76.00	6.50	24.00
82	JOLLY	416.0	88.30	37.0	7.90	18.0	3.80	19.00	75.00	6.50	25.00
83	JOLLY	362.0	86.60	41.0	9.80	15.0	3.70	17.75	75.00	6.00	25.00
84	JOLLY	351.0	86.00	48.0	11.80	9.0	2.30	17.00	73.90	6.00	26.10
85	JOLLY	344.0	82.30	60.0	14.40	14.0	3.30	17.50	76.10	5.50	23.90
86	JOLLY	322.0	61.30	180.0	34.30	23.0	6.40	20.50	78.80	5.50	21.20

ELEMENTARY SCHOOLS, ALL YEARS - KELLY LAKE

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	KELLY LAKE	657.0	98.35	9.0	1.35	2.0	0.30	24.00	92.00	2.00	8.00
70	KELLY LAKE	711.0	98.30	10.0	1.40	2.0	0.30	27.00	93.10	2.00	6.90
71	KELLY LAKE	538.0	92.40	43.0	7.40	1.0	0.20	24.00	89.00	3.00	11.00
72	KELLY LAKE	345.0	62.70	202.0	36.70	3.0	0.50	25.00	89.00	3.00	11.00
73	KELLY LAKE	248.0	41.50	345.0	57.70	5.0	0.80	26.00	90.00	3.00	10.00
74	KELLY LAKE	150.0	24.00	471.0	75.50	3.0	0.50	26.00	76.00	8.00	24.00
75	KELLY LAKE	66.0	10.50	557.0	88.60	6.0	1.00	22.00	71.00	9.00	29.00
76	KELLY LAKE	24.0	3.40	686.0	96.20	3.0	0.40	25.00	74.00	9.00	26.00
77	KELLY LAKE	3.0	0.40	780.0	99.50	1.0	0.10	30.00	77.00	9.00	23.00
78	KELLY LAKE	9.0	1.00	703.0	98.70	2.0	0.30	29.00	81.00	7.00	19.00
79	KELLY LAKE	5.0	0.70	674.0	99.10	1.0	0.10	27.00	79.00	7.00	21.00
80	KELLY LAKE	4.0	0.60	643.0	99.10	2.0	0.30	28.00	80.00	7.00	20.00
81	KELLY LAKE	6.0	1.10	552.0	98.70	1.0	0.20	22.00	75.00	7.50	25.00
82	KELLY LAKE	4.0	0.70	567.0	99.00	2.0	0.30	23.00	78.00	6.50	22.00
83	KELLY LAKE	4.0	0.80	511.0	98.60	3.0	0.60	19.00	71.00	7.75	29.00
84	KELLY LAKE	5.0	1.10	463.0	98.70	1.0	0.20	17.25	66.30	8.75	33.70
85	KELLY LAKE	7.0	1.50	472.0	98.10	2.0	0.40	19.00	66.70	9.50	33.30
86	KELLY LAKE	1.0	0.20	419.0	98.80	4.0	0.90	17.50	66.00	9.00	34.00

ELEMENTARY SCHOOLS, ALL YEARS - KINGSLEY

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
71	KINGSLEY	698.0	99.90	1.0	0.10	0.0	0.00	28.00	97.00	1.00	3.00
72	KINGSLEY	922.0	100.00	0.0	0.00	0.0	0.00	37.00	97.00	1.00	3.00
73	KINGSLEY	793.0	100.00	0.0	0.00	0.0	0.00	32.00	94.00	2.00	6.00
74	KINGSLEY	831.0	99.90	0.0	0.00	1.0	0.10	35.00	97.00	1.00	3.00
75	KINGSLEY	791.0	99.90	0.0	0.00	1.0	0.10	33.00	94.00	2.00	6.00
76	KINGSLEY	736.0	99.90	0.0	0.00	1.0	0.10	32.00	91.00	3.00	9.00
77	KINGSLEY	709.0	99.40	0.0	0.00	4.0	0.60	29.00	85.00	5.00	15.00
78	KINGSLEY	656.0	99.20	0.0	0.00	5.0	0.80	26.00	84.00	5.00	16.00
79	KINGSLEY	620.0	99.40	0.0	0.00	4.0	0.60	24.50	82.00	5.50	18.00
80	KINGSLEY	588.0	99.30	2.0	0.30	2.0	0.30	24.50	78.00	7.00	22.00
81	KINGSLEY	534.0	98.70	4.0	0.70	3.0	0.60	21.75	78.00	6.00	22.00
82	KINGSLEY	481.0	98.20	5.0	1.00	4.0	0.80	20.00	80.00	5.00	20.00
83	KINGSLEY	432.0	97.10	9.0	2.00	4.0	0.90	19.50	80.00	5.00	20.00
84	KINGSLEY	388.0	96.30	8.0	2.00	7.0	1.70	20.00	83.30	4.00	16.70
85	KINGSLEY	369.0	94.60	11.0	2.80	10.0	2.60	19.00	82.60	4.00	17.40
86	KINGSLEY	354.0	92.20	11.0	2.90	19.0	4.90	20.00	83.30	4.00	16.70

ELEMENTARY SCHOOLS, ALL YEARS - KITTREDGE

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	KITTREDGE	613.0	97.60	1.0	0.20	14.0	2.30	24.00	96.00	1.00	4.00
70	KITTREDGE	592.0	97.90	1.0	0.20	12.0	2.00	23.00	95.80	1.00	4.20
71	KITTREDGE	550.0	97.90	0.0	0.00	12.0	2.10	22.00	96.00	1.00	4.00
72	KITTREDGE	449.0	97.00	2.0	0.40	12.0	2.50	21.00	95.00	1.00	5.00
73	KITTREDGE	402.0	95.50	0.0	0.00	19.0	4.50	19.00	95.00	1.00	5.00
74	KITTREDGE	365.0	93.10	1.0	0.30	26.0	6.70	18.00	95.00	1.00	5.00

ELEMENTARY SCHOOLS, ALL YEARS - KNOLLWOOD

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	KNOLLWOOD	786.0	99.60	1.0	0.10	2.0	0.30	29.00	94.00	2.00	6.00
70	KNOLLWOOD	680.0	99.70	1.0	0.10	1.0	0.10	28.00	93.30	2.00	6.70
71	KNOLLWOOD	632.0	98.90	5.0	0.80	2.0	0.30	25.00	96.00	1.00	4.00
72	KNOLLWOOD	521.0	90.30	49.0	8.50	7.0	1.20	24.00	92.00	2.00	8.00
73	KNOLLWOOD	433.0	74.50	142.0	24.40	6.0	1.00	21.00	84.00	4.00	16.00
74	KNOLLWOOD	368.0	60.70	231.0	38.10	7.0	1.20	29.00	97.00	1.00	3.00
75	KNOLLWOOD	277.0	50.50	267.0	48.70	4.0	0.70	25.00	93.00	2.00	7.00
76	KNOLLWOOD	235.0	41.90	322.0	57.40	4.0	0.70	21.00	81.00	5.00	19.00
77	KNOLLWOOD	161.0	29.10	385.0	69.60	7.0	1.30	22.00	79.00	6.00	21.00
78	KNOLLWOOD	90.0	15.90	463.0	81.90	12.0	2.10	22.00	79.00	6.00	21.00
79	KNOLLWOOD	74.0	12.90	493.0	85.70	8.0	1.40	22.00	77.00	6.50	23.00
80	KNOLLWOOD	55.0	8.50	577.0	89.00	16.0	2.50	25.50	78.00	7.00	22.00
81	KNOLLWOOD	56.0	9.30	536.0	88.90	11.0	1.80	23.38	76.00	7.37	24.00
82	KNOLLWOOD	49.0	8.00	547.0	89.90	13.0	2.10	20.75	67.00	10.00	33.00
83	KNOLLWOOD	46.0	7.30	574.0	91.30	9.0	1.40	21.00	68.00	.75	32.00
84	KNOLLWOOD	37.0	6.60	512.9	1.60	10.0	1.80	19.75	67.50	9.50	32.50
85	KNOLLWOOD	32.0	5.50	550.0	93.80	4.0	0.70	21.50	71.70	8.50	28.30
86	KNOLLWOOD	26.0	4.50	560.0	94.10	8.0	1.40	21.00	70.00	9.00	30.00

PAGE: 5

ELEMENTARY SCHOOLS, ALL YEARS - L J STEELE

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	L J STEELE	532.0	86.50	80.0	13.00	3.0	0.50	24.00	96.00	1.00	4.00
70	L J STEELE	314.0	42.70	418.0	56.90	3.0	0.40	28.00	90.30	3.00	9.70
71	L J STEELE	104.0	15.20	581.0	84.80	0.0	0.00	29.00	91.00	3.00	9.00
72	L J STEELE	29.0	3.70	751.0	96.20	1.0	0.10	30.00	83.00	6.00	17.00
73	L J STEELE	12.0	1.52	774.0	98.35	1.0	0.13	28.00	8[illegible].00	6.00	18.00
74	L J STEELE	10.0	1.30	770.0	98.70	0.0	0.00	17.00	46.00	20.00	54.00
75	L J STEELE	9.0	1.30	692.0	98.70	0.0	0.00	17.00	53.00	15.00	47.00
76	L J STEELE	8.0	1.10	709.0	98.90	0.0	0.00	19.00	58.00	14.00	42.00
77	L J STEELE	7.0	1.00	670.0	99.00	0.0	0.00	23.00	70.00	10.00	30.00
78	L J STEELE	11.0	1.60	662.0	98.20	1.0	0.10	24.00	75.00	8.00	25.00
79	L J STEELE	11.0	1.70	637.0	98.20	1.0	0.20	25.00	78.00	7.00	22.00
80	L J STEELE	3.0	0.50	546.0	99.30	1.0	0.20	23.00	77.00	7.00	23.00
81	L J STEELE	5.0	0.90	540.0	99.10	0.0	0.00	20.00	69.00	9.00	31.00
82	L J STEELE	6.0	1.10	521.0	98.90	0.0	0.00	20.00	68.00	9.25	32.00
83	L J STEELE	4.0	0.80	511.0	99.20	0.0	0.00	18.00	64.00	10.00	36.00
84	L J STEELE	5.0	1.00	503.0	99.00	0.0	0.00	18.00	64.30	10.00	35.70
85	L J STEELE	4.0	0.80	509.0	99.20	0.0	0.00	20.00	66.70	10.00	33.30
86	L J STEELE	2.0	0.30	695.0	99.70	0.0	0.00	19.00	67.90	9.00	32.10

PAGE: 58

ELEMENTARY SCHOOLS, ALL YEARS - LAUREL RIDGE

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	LAUREL RIDGE	811.0	99.40	0.0	0.00	5.0	0.60	29.00	94.00	2.00	6.00
70	LAUREL RIDGE	778.0	99.20	0.0	0.00	6.0	0.80	31.00	93.90	2.00	6.10
71	LAUREL RIDGE	687.0	99.00	0.0	0.00	7.0	1.00	28.00	88.00	4.00	12.00
72	LAUREL RIDGE	620.0	98.40	0.0	0.00	10.0	1.70	27.00	93.00	2.00	7.00
73	LAUREL RIDGE	568.0	98.30	0.0	0.00	10.0	1.80	25.00	93.00	2.00	7.00
74	LAUREL RIDGE	518.0	99.20	0.0	0.00	4.0	0.80	26.00	93.00	2.00	7.00
75	LAUREL RIDGE	467.0	97.90	4.0	0.80	6.0	1.30	27.00	93.00	2.00	7.00
76	LAUREL RIDGE	481.0	97.80	3.0	0.60	8.0	1.60	25.00	89.00	3.00	11.00
77	LAUREL RIDGE	419.0	96.50	2.0	0.50	13.0	3.00	26.00	87.00	4.00	13.00
78	LAUREL RIDGE	385.0	93.70	5.0	1.20	21.0	5.00	27.00	87.00	4.00	13.00
79	LAUREL RIDGE	372.0	95.10	5.0	1.30	14.0	3.60	27.00	84.00	5.00	16.00
80	LAUREL RIDGE	342.0	93.70	6.0	1.60	17.0	4.70	16.50	80.00	4.00	20.00
81	LAUREL RIDGE	312.0	91.20	11.0	3.20	19.0	5.60	16.00	76.00	5.00	24.00
82	LAUREL RIDGE	289.0	92.60	5.0	1.60	18.0	5.80	15.00	75.00	5.00	25.00
83	LAUREL RIDGE	412.0	91.80	5.0	1.10	32.0	7.10	18.00	75.00	6.00	25.00
84	LAUREL RIDGE	368.0	92.50	7.0	1.80	23.0	5.70	18.00	76.60	5.50	23.40
85	LAUREL RIDGE	352.0	89.60	17.0	4.30	24.0	6.10	17.25	79.30	4.50	20.70
86	LAUREL RIDGE	337.0	82.60	39.0	9.60	32.0	7.80	18.00	83.70	3.50	16.30

PAGE: 60

ELEMENTARY SCHOOLS, ALL YEARS - LIVSEY

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
71	LIVSEY	585.0	100.00	0.0	0.00	0.0	0.00	24.00	96.00	1.00	4.00
72	LIVSEY	503.0	100.00	0.0	0.00	0.0	0.00	24.00	96.00	1.00	4.00
73	LIVSEY	496.0	100.00	0.0	0.00	0.0	0.00	23.00	96.00	1.00	4.00
74	LIVSEY	494.0	100.00	0.0	0.00	0.0	0.00	22.00	92.00	2.00	8.00
75	LIVSEY	488.0	100.00	0.0	0.00	0.0	0.00	21.00	88.00	3.00	12.00
76	LIVSEY	453.0	99.60	0.0	0.00	2.0	0.40	18.00	82.00	4.00	18.00
77	LIVSEY	428.0	100.00	0.0	0.00	0.0	0.00	18.00	86.00	3.00	14.00
78	LIVSEY	408.0	99.00	1.0	0.20	3.0	0.70	18.00	82.00	4.00	18.00
79	LIVSEY	380.0	98.70	0.0	0.00	5.0	1.30	17.50	81.00	4.00	19.00
80	LIVSEY	372.0	98.20	0.0	0.00	7.0	1.90	18.00	82.00	4.00	18.00
81	LIVSEY	332.0	97.60	0.0	0.00	8.0	2.40	15.50	76.00	5.00	24.00
82	LIVSEY	291.0	95.70	0.0	0.00	13.0	4.30	14.00	74.00	5.00	26.00
83	LIVSEY	351.0	95.40	6.0	1.60	11.0	3.00	16.50	77.00	5.00	23.00
84	LIVSEY	308.0	93.10	4.0	1.20	19.0	5.70	15.25	75.30	5.00	24.70
85	LIVSEY	288.0	95.00	3.0	1.00	12.0	4.00	15.00	76.90	4.50	23.10
86	LIVSEY	289.0	94.40	7.0	2.30	10.0	3.30	16.00	78.10	4.50	21.90

PAGE: 61

ELEMENTARY SCHOOLS, ALL YEARS - MAINSTREET

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
80	MAINSTREET	452.0	95.80	12.0	2.50	8.0	1.60	20.50	77.00	6.00	23.00
81	MAINSTREET	505.0	88.90	44.0	7.70	19.0	3.30	22.00	79.00	6.00	21.00
82	MAINSTREET	601.0	89.00	55.0	8.10	19.0	2.90	24.75	76.00	8.00	24.00
83	MAINSTREET	621.0	86.10	73.0	10.10	27.0	3.80	27.75	78.00	8.00	22.00
84	MAINSTREET	662.0	81.20	111.0	13.60	42.5	5.20	28.75	74.20	10.00	25.80
85	MAINSTREET	662.0	76.40	152.0	17.50	53.0	6.10	30.00	73.20	11.00	26.80
86	MAINSTREET	687.0	73.20	206.0	21.90	46.0	4.90	31.00	70.50	13.00	29.50

PAGE: 1

ELEMENTARY SCHOOLS, ALL YEARS - MARGARET HARRIS

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	MARGARET HARRIS	211.0	100.00	0.0	0.00	0.0	0.00	16.00	100.00	0.00	0.00
70	MARGARET HARRIS	263.0	100.00	0.0	0.00	0.0	0.00	16.00	94.00	1.00	6.00
71	MARGARET HARRIS	245.0	100.00	0.0	0.00	0.0	0.00	15.00	88.00	2.00	12.00
72	MARGARET HARRIS	334.0	98.80	4.0	1.20	0.0	0.00	20.00	91.00	2.00	9.00
73	MARGARET HARRIS	296.0	98.70	3.0	1.00	1.0	0.30	19.00	90.00	2.00	10.00
74	MARGARET HARRIS	268.0	97.80	3.0	1.10	3.0	1.10	17.00	89.00	2.00	11.00

PAGE: 2

ELEMENTARY SCHOOLS, ALL YEARS - McCLENDON

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	McCLENDON	514.0	86.20	82.0	13.80	0.0	0.00	25.00	86.00	4.00	14.00
70	McCLENDON	504.0	77.50	146.0	22.50	0.0	0.00	32.00	88.90	4.00	11.10
71	McCLENDON	487.0	78.20	136.0	21.80	0.0	0.00	30.00	88.00	4.00	12.00
72	McCLENDON	596.0	83.00	120.0	16.70	2.0	0.30	31.00	89.00	4.00	11.00
73	McCLENDON	589.0	84.10	107.0	15.30	4.0	0.60	31.00	89.00	4.00	11.00
74	McCLENDON	763.0	91.00	65.0	7.80	10.0	1.20	37.00	90.00	4.00	10.00
75	McCLENDON	686.0	90.90	60.0	7.90	9.0	1.20	36.00	90.00	4.00	10.00
76	McCLENDON	716.0	91.10	59.0	7.50	11.0	1.50	33.00	89.00	4.00	11.00
77	McCLENDON	692.0	89.20	72.0	9.30	12.0	1.50	33.00	87.00	5.00	13.00
78	McCLENDON	718.0	86.80	91.0	11.00	18.0	2.20	31.00	82.00	7.00	18.00
79	McCLENDON	643.0	83.70	109.0	14.20	16.0	2.10	31.00	82.00	7.00	18.00
80	McCLENDON	624.0	79.20	125.0	15.90	39.0	5.00	31.50	80.00	8.00	20.00
81	McCLENDON	528.0	76.60	123.0	17.90	38.0	5.50	27.25	78.00	7.50	22.00
82	McCLENDON	515.0	77.60	114.0	17.20	35.0	5.20	24.25	75.00	8.00	25.00
83	McCLENDON	435.0	75.00	115.0	19.80	30.0	5.20	23.25	78.00	6.50	22.00
84	McCLENDON	406.0	71.00	142.0	24.80	24.0	4.20	24.00	78.70	6.50	21.30
85	McCLENDON	376.0	65.60	156.0	27.20	41.0	7.20	23.50	78.30	6.50	21.70
86	McCLENDON	390.0	61.00	211.0	33.00	38.0	5.90	23.00	74.20	8.00	25.80

ELEMENTARY SCHOOLS, ALL YEARS - MEADOWVIEW

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	MEADOWVIEW	608.0	100.00	0.0	0.00	0.0	0.00	25.00	96.00	1.00	4.00
70	MEADOWVIEW	733.0	100.00	0.0	0.00	0.0	0.00	29.00	93.50	2.00	6.50
71	MEADOWVIEW	642.0	99.40	4.0	0.60	0.0	0.00	27.00	90.00	3.00	10.00
72	MEADOWVIEW	562.0	89.30	64.0	10.20	3.0	0.50	24.00	80.00	6.00	10.00
73	MEADOWVIEW	339.0	58.60	237.0	40.90	3.0	0.50	24.00	80.00	6.00	20.00
74	MEADOWVIEW	195.0	41.50	272.0	57.90	3.0	0.60	22.00	79.00	6.00	21.00
75	MEADOWVIEW	166.0	33.50	327.0	65.90	3.0	0.60	24.00	86.00	4.00	14.00
76	MEADOWVIEW	152.0	26.40	423.0	72.60	0.0	0.00	23.60	74.00	8.00	26.00
77	MEADOWVIEW	126.0	22.70	428.0	77.10	1.0	0.20	23.00	72.00	9.00	28.00
78	MEADOWVIEW	108.0	19.90	434.0	80.10	0.0	0.00	25.00	78.00	7.00	22.00
79	MEADOWVIEW	109.0	20.70	418.0	79.30	0.0	0.00	22.00	73.00	8.00	27.00
80	MEADOWVIEW	93.0	19.30	387.0	80.50	1.0	0.20	24.00	77.00	7.00	23.00
81	MEADOWVIEW	94.0	20.60	361.0	79.00	2.0	0.40	15.50	63.00	9.00	37.00
82	MEADOWVIEW	85.0	19.40	352.0	80.40	1.0	0.20	15.00	62.00	9.25	38.00
83	MEADOWVIEW	74.0	18.30	327.0	80.90	3.0	0.70	14.00	62.00	8.50	38.00
84	MEADOWVIEW	84.0	21.20	312.0	78.60	1.0	0.20	14.25	64.00	8.00	36.00
85	MEADOWVIEW	70.0	18.00	318.0	82.00	0.0	0.00	14.50	63.00	8.50	37.00
86	MEADOWVIEW	69.0	17.10	333.0	82.40	2.0	0.50	15.50	68.90	7.00	31.10

820

ELEMENTARY SCHOOLS, ALL YEARS - MEDLOCK

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	MEDLOCK	630.0	80.90	149.0	19.10	0.0	0.00	30.00	94.00	2.00	6.00
70	MEDLOCK	586.0	85.70	93.0	13.60	5.0	0.70	31.00	96.90	1.00	3.10
71	MEDLOCK	579.0	85.30	94.0	13.80	6.0	0.90	28.00	97.00	1.00	3.00
72	MEDLOCK	475.0	83.30	92.0	16.10	3.0	0.50	26.00	93.00	2.00	7.00
73	MEDLOCK	444.0	81.80	85.0	15.60	14.0	2.60	23.00	92.00	2.00	8.00
74	MEDLOCK	388.0	77.10	97.0	19.30	18.0	3.60	22.00	96.00	1.00	4.00
75	MEDLOCK	364.0	76.30	95.0	19.90	18.0	3.60	21.00	91.00	2.00	9.00
76	MEDLOCK	310.0	76.70	79.0	19.60	15.0	3.60	17.00	85.00	3.00	15.00
77	MEDLOCK	295.0	77.20	71.0	18.60	16.0	4.20	19.00	83.00	4.00	17.00
78	MEDLOCK	292.0	76.40	73.0	19.10	17.0	4.50	20.00	83.00	4.00	17.00
79	MEDLOCK	298.0	73.60	91.0	22.50	16.0	3.90	19.50	80.00	5.00	20.00
80	MEDLOCK	287.0	73.80	84.0	21.60	18.0	4.60	20.00	80.00	5.00	20.00
81	MEDLOCK	262.0	67.90	107.0	27.70	17.0	4.40	15.50	72.00	6.00	28.00
82	MEDLOCK	252.0	67.40	110.0	29.40	12.0	3.20	16.75	77.00	5.00	23.00
83	MEDLOCK	224.0	62.60	121.0	33.80	13.0	3.70	16.25	80.00	4.00	20.00
84	MEDLOCK	213.0	60.00	131.0	36.90	11.0	3.10	14.75	72.80	5.50	27.20
85	MEDLOCK	187.0	59.00	109.0	34.40	21.0	6.60	15.00	75.00	5.00	25.00
86	MEDLOCK	191.0	53.80	140.0	39.40	24.0	6.80	16.00	76.20	5.00	23.80

321

ELEMENTARY SCHOOLS, ALL YEARS - MIDVALE

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	MIDVALE	835.0	100.00	0.0	0.00	0.0	0.00	33.00	94.00	2.00	6.00
70	MIDVALE	873.0	99.90	1.0	0.10	0.0	0.00	33.00	94.30	2.00	5.70
71	MIDVALE	718.0	99.60	3.0	0.40	0.0	0.00	29.00	97.00	1.00	3.00
72	MIDVALE	697.0	100.00	0.0	0.00	0.0	0.00	31.00	97.00	1.00	3.00
73	MIDVALE	675.0	99.90	0.0	0.00	1.0	0.10	31.00	94.00	2.00	6.00
74	MIDVALE	731.0	99.90	0.0	0.00	1.0	0.10	35.00	97.00	1.00	3.00
75	MIDVALE	662.0	99.40	0.0	0.00	4.0	0.60	32.00	94.00	2.00	6.00
76	MIDVALE	627.0	99.40	0.0	0.00	4.0	0.60	29.00	91.00	3.00	9.00
77	MIDVALE	574.0	98.50	0.0	0.00	9.0	1.50	24.00	83.00	5.00	17.00
78	MIDVALE	562.0	98.10	1.0	0.20	10.0	0.90	25.00	83.00	5.00	17.00
79	MIDVALE	501.0	96.50	3.0	0.60	15.0	2.90	22.50	82.00	5.00	18.00
81	MIDVALE	421.0	93.60	1.0	0.20	28.0	6.20	19.50	78.00	5.50	22.00
82	MIDVALE	402.0	91.40	2.0	0.50	36.0	8.20	20.00	83.00	4.00	17.00
83	MIDVALE	393.0	91.20	1.0	0.20	37.0	8.60	18.75	79.00	5.00	21.00
84	MIDVALE	358.0	89.30	1.0	0.20	42.0	10.50	19.25	79.40	5.00	70.60
85	MIDVALE	362.0	85.00	14.0	3.30	50.0	11.70	18.50	78.70	5.00	21.30
86	MIDVALE	367.0	84.40	19.0	4.40	49.0	11.30	18.50	78.70	5.00	21.30

ELEMENTARY SCHOOLS, ALL YEARS - MIDWAY

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	MIDWAY	590.0	99.70	0.0	0.00	2.0	0.30	23.00	96.00	1.00	4.00
70	MIDWAY	617.0	99.20	1.0	0.20	4.0	0.60	24.00	96.00	1.00	4.00
71	MIDWAY	553.0	99.60	1.0	0.20	1.0	0.20	23.00	96.00	1.00	4.00
72	MIDWAY	499.0	98.80	5.0	1.00	1.0	0.20	27.00	93.00	2.00	7.00
73	MIDWAY	449.0	98.50	5.0	1.10	2.0	0.40	24.00	92.00	2.00	8.00
74	MIDWAY	436.0	97.80	9.0	2.00	1.0	0.20	27.00	96.00	1.00	4.00
75	MIDWAY	415.0	97.90	7.0	1.70	2.0	0.40	26.00	93.00	2.00	7.00
76	MIDWAY	412.0	94.50	22.0	5.00	2.0	0.40	20.50	87.00	3.00	13.00
77	MIDWAY	365.0	90.60	36.0	8.90	2.0	0.50	23.00	85.00	4.00	15.00
78	MIDWAY	364.0	84.10	64.0	14.80	5.0	1.20	21.00	78.00	6.00	22.00
79	MIDWAY	349.0	73.50	116.0	24.40	10.0	2.00	23.00	81.00	5.50	19.00
80	MIDWAY	310.0	67.00	136.0	29.40	17.0	3.70	23.00	79.00	6.00	21.00
81	MIDWAY	276.0	60.70	161.0	35.40	18.0	3.90	18.25	75.00	6.00	25.00
82	MIDWAY	261.0	59.50	163.0	37.10	15.0	3.50	17.75	75.00	6.00	25.00
83	MIDWAY	234.0	53.10	191.0	43.30	16.0	3.70	17.25	73.00	6.50	27.00
84	MIDWAY	225.0	50.10	203.0	45.20	21.0	4.70	18.75	75.80	6.00	24.20
85	MIDWAY	184.0	42.70	225.0	52.20	22.0	5.10	18.00	73.50	6.50	26.50
86	MIDWAY	154.0	38.60	215.0	53.90	30.0	7.50	15.00	62.50	9.00	37.50

PAGE: 6

ELEMENTARY SCHOOLS, ALL YEARS - MONTCLAIR

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	MONTCLAIR	502.0	99.20	4.0	0.80	0.0	0.00	19.00	95.00	1.00	5.00
70	MONTCLAIR	454.0	99.60	2.0	0.40	0.0	0.00	21.00	95.50	1.00	4.50
71	MONTCLAIR	420.0	99.50	2.0	0.50	0.0	0.00	18.00	100.00	0.00	0.00
72	MONTCLAIR	396.0	99.20	3.0	0.80	0.0	0.00	22.00	96.00	1.00	4.00
73	MONTCLAIR	416.0	98.10	6.0	1.40	2.0	0.50	20.00	95.00	1.00	5.00
74	MONTCLAIR	401.0	97.80	4.0	1.00	5.0	1.20	23.00	96.00	1.00	4.00
75	MONTCLAIR	315.0	94.60	7.0	2.10	11.0	3.30	19.00	90.00	2.00	10.00
76	MONTCLAIR	322.0	96.40	7.0	2.10	5.0	1.50	16.50	85.00	3.00	15.00
77	MONTCLAIR	325.0	94.20	6.0	1.70	14.0	4.10	17.00	81.00	4.00	19.00
78	MONTCLAIR	306.0	92.20	8.0	2.40	18.0	5.40	16.00	80.00	4.00	20.00
79	MONTCLAIR	256.0	81.80	27.0	8.60	30.0	9.70	18.50	80.00	4.50	20.00
80	MONTCLAIR	209.0	82.90	16.0	6.30	27.0	10.80	15.00	79.00	4.00	21.00
81	MONTCLAIR	211.0	76.70	28.0	10.20	36.0	13.10	13.75	77.00	4.00	23.00
82	MONTCLAIR	210.0	76.90	31.0	11.40	32.0	11.70	14.50	78.00	4.00	22.00
83	MONTCLAIR	209.0	69.70	35.0	11.70	56.0	18.70	13.50	73.00	5.00	27.00
84	MONTCLAIR	270.0	69.90	50.0	13.00	66.0	17.10	18.00	78.30	5.00	21.70
85	MONTCLAIR	245.0	65.30	66.0	17.60	64.0	17.10	15.25	71.80	6.00	28.20
86	MONTCLAIR	241.0	60.10	91.0	22.70	69.0	17.20	16.00	69.60	7.00	30.40

PAGE: 7

ELEMENTARY SCHOOLS, ALL YEARS - MONTGOMERY

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	MONTGOMERY	1,079.0	91.40	98.0	8.30	3.0	0.30	44.00	96.00	2.00	4.00
70	MONTGOMERY	693.0	89.50	81.0	10.50	0.0	0.00	33.00	94.30	2.00	5.70
71	MONTGOMERY	671.0	89.90	75.0	10.10	0.0	0.00	33.00	94.00	2.00	6.00
72	MONTGOMERY	760.0	92.50	62.0	7.50	0.0	0.00	36.00	92.00	3.00	8.00
73	MONTGOMERY	535.0	88.70	66.0	11.00	2.0	0.30	32.00	91.00	3.00	9.00
74	MONTGOMERY	497.0	91.00	47.0	8.60	2.0	0.40	30.00	97.00	1.00	3.00
75	MONTGOMERY	804.0	88.00	105.0	11.50	5.0	0.50	46.00	94.00	3.00	6.00
76	MONTGOMERY	763.0	88.40	97.0	11.20	3.0	0.30	39.00	91.00	4.00	9.00
77	MONTGOMERY	735.0	89.50	81.0	9.90	5.0	0.60	36.00	84.00	7.00	16.00
78	MONTGOMERY	665.0	88.90	77.0	10.30	6.0	0.70	31.00	82.00	7.00	18.00
79	MONTGOMERY	643.0	88.60	73.0	10.10	10.0	1.40	35.50	84.00	7.00	16.00
80	MONTGOMERY	588.0	86.50	81.0	11.90	11.0	1.60	34.00	83.00	7.00	17.00
81	MONTGOMERY	572.0	85.40	90.0	13.40	8.0	1.20	26.25	79.00	7.00	21.00
82	MONTGOMERY	545.0	84.50	90.0	14.00	10.0	1.60	24.50	78.00	7.00	22.00
83	MONTGOMERY	501.0	83.80	88.0	14.70	9.0	1.50	23.50	77.00	7.00	23.00
84	MONTGOMERY	457.0	80.30	97.0	17.00	15.0	2.60	23.25	76.90	7.00	23.10
85	MONTGOMERY	415.0	79.30	95.0	18.20	13.0	2.50	22.00	78.60	6.00	21.40
86	MONTGOMERY	390.0	76.30	105.0	20.50	16.0	3.10	19.00	70.40	8.00	29.60

PAGE: 1

ELEMENTARY SCHOOLS, ALL YEARS - MURPHY CANDLER

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	MURPHY CANDLER	229.0	83.90	44.0	16.10	0.0	0.00	13.00	93.00	1.00	7.00
70	MURPHY CANDLER	233.0	86.00	38.0	14.00	0.0	0.00	17.00	94.00	1.00	6.00
71	MURPHY CANDLER	265.0	86.90	40.0	13.10	0.0	0.00	17.00	94.00	1.00	6.00
72	MURPHY CANDLER	248.0	89.90	28.0	10.10	0.0	0.00	14.00	73.70	5.00	26.30
73	MURPHY CANDLER	274.0	92.60	22.0	7.40	0.0	0.00	13.00	72.00	5.00	28.00
74	MURPHY CANDLER	424.0	95.90	18.0	4.10	0.0	0.00	23.00	96.00	1.00	4.00
75	MURPHY CANDLER	408.0	95.30	20.0	4.70	0.0	0.00	22.00	92.00	2.00	8.00
76	MURPHY CANDLER	426.0	94.50	24.0	5.30	1.0	0.20	22.00	88.00	3.00	12.00
77	MURPHY CANDLER	472.0	92.40	38.0	7.40	1.0	0.20	23.00	85.00	4.00	15.00
78	MURPHY CANDLER	513.0	91.30	48.0	8.50	1.0	0.20	24.00	80.00	6.00	20.00
79	MURPHY CANDLER	499.0	90.60	50.0	9.00	2.0	0.40	22.50	79.00	6.00	21.00
80	MURPHY CANDLER	496.0	89.40	55.0	9.90	4.0	0.70	23.50	80.00	6.00	20.00
81	MURPHY CANDLER	453.0	87.50	61.0	11.80	4.0	0.80	22.00	79.00	6.00	21.00
82	MURPHY CANDLER	414.0	84.50	71.0	14.50	5.0	1.00	19.75	77.00	6.00	23.00
83	MURPHY CANDLER	395.0	78.80	100.0	20.00	6.0	1.20	20.00	77.00	6.00	23.00
84	MURPHY CANDLER	381.0	72.30	142.0	26.90	4.0	0.80	19.75	73.80	7.00	26.20
85	MURPHY CANDLER	353.0	67.10	170.0	32.30	3.0	0.60	21.75	78.40	6.00	21.60
86	MURPHY CANDLER	330.0	56.90	247.0	42.60	3.0	0.50	22.00	75.90	7.00	24.10

PAGE: 2

ELEMENTARY SCHOOLS, ALL YEARS - NANCY CREEK

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
70	NANCY CREEK	720.0	99.31	1.0	0.14	4.0	0.55	25.00	96.20	1.00	3.80
71	NANCY CREEK	723.0	99.20	2.0	0.30	4.0	0.50	30.00	94.00	2.00	6.00
72	NANCY CREEK	719.0	99.20	3.0	0.40	3.0	0.40	31.00	97.00	1.00	3.00
73	NANCY CREEK	675.0	99.60	1.0	0.10	2.0	0.30	28.00	93.00	2.00	7.00
74	NANCY CREEK	673.0	99.70	0.0	0.00	2.0	0.30	30.00	97.00	1.00	3.00
75	NANCY CREEK	718.0	97.70	11.0	1.50	6.0	0.80	31.00	94.00	2.00	6.00
76	NANCY CREEK	655.0	97.50	14.0	2.10	3.0	0.40	29.00	91.00	3.00	9.00
77	NANCY CREEK	602.0	96.90	10.0	1.60	9.0	1.40	27.00	90.00	4.00	10.00
78	NANCY CREEK	582.0	96.40	7.0	1.20	15.0	2.50	25.00	81.00	6.00	19.00
79	NANCY CREEK	538.0	96.10	12.0	2.10	10.0	1.80	24.50	79.00	6.50	21.00
80	NANCY CREEK	482.0	91.60	31.0	5.90	13.0	2.50	22.50	76.00	7.00	24.00
81	NANCY CREEK	411.0	92.80	22.0	5.00	10.0	2.30	18.00	73.00	6.50	27.00
82	NANCY CREEK	403.0	87.80	43.0	9.40	13.0	2.90	18.50	77.00	5.50	23.00
83	NANCY CREEK	355.0	85.70	49.0	11.80	10.0	2.40	17.25	73.00	6.50	27.00
84	NANCY CREEK	316.0	80.20	62.0	15.70	16.0	4.10	16.75	72.00	6.50	28.00
85	NANCY CREEK	271.0	78.10	66.0	19.00	10.0	2.90	16.50	75.00	5.50	25.00
86	NANCY CREEK	265.0	72.40	64.0	17.50	37.0	10.10	17.50	77.80	5.00	22.20

PAGE: 1

ELEMENTARY SCHOOLS, ALL YEARS - NORTHWOODS

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	NORTHWOODS	0.0	0.00	0.0	0.00	0.0	0.00	30.00	97.00	1.00	3.00
70	NORTHWOODS	0.0	0.00	0.0	0.00	0.0	0.00	32.00	97.00	1.00	3.00
71	NORTHWOODS	713.0	100.00	0.0	0.00	0.0	0.00	32.00	97.00	1.00	3.00
72	NORTHWOODS	633.0	99.50	3.0	0.50	0.0	0.00	29.00	97.00	1.00	3.00
73	NORTHWOODS	580.0	99.10	1.0	0.20	4.0	0.70	26.00	93.00	2.00	7.00
74	NORTHWOODS	600.0	98.70	3.0	0.50	5.0	0.80	31.00	97.00	1.00	3.00
75	NORTHWOODS	534.0	99.10	3.0	0.60	2.0	0.40	31.00	94.00	2.00	6.00
76	NORTHWOODS	439.0	97.50	8.0	1.80	3.0	0.70	22.00	88.00	3.00	12.00
77	NORTHWOODS	416.0	95.00	17.0	3.90	5.0	1.20	23.00	88.00	3.00	12.00
78	NORTHWOODS	378.0	91.30	22.0	5.30	14.0	3.30	23.00	85.00	4.00	15.00
79	NORTHWOODS	338.0	87.60	29.0	7.50	19.0	4.90	23.00	85.00	4.00	15.00
80	NORTHWOODS	349.0	87.30	30.0	7.50	21.0	5.30	21.00	81.00	5.00	19.00
81	NORTHWOODS	327.0	85.60	33.0	8.60	22.0	5.80	16.75	77.00	5.00	23.00
82	NORTHWOODS	291.0	83.10	27.0	7.70	32.0	9.10	16.25	76.00	5.00	24.00

PAGE: 4

ELEMENTARY SCHOOLS, ALL YEARS - OAK GROVE

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	OAK GROVE	457.0	99.30	0.0	0.00	3.0	0.70	20.00	95.00	1.00	5.00
70	OAK GROVE	510.0	99.40	0.0	0.00	3.0	0.60	23.00	95.80	1.00	4.20
71	OAK GROVE	441.0	99.10	0.0	0.00	4.0	0.90	25.00	96.00	1.00	4.00
72	OAK GROVE	402.0	98.50	0.0	0.00	6.0	1.40	24.00	96.00	1.00	4.00
73	OAK GROVE	371.0	98.70	0.0	0.00	5.0	1.30	22.00	96.00	1.00	4.00
74	OAK GROVE	521.0	97.00	12.0	2.20	4.0	0.80	31.00	97.00	1.00	3.00
75	OAK GROVE	463.0	96.70	11.0	2.30	5.0	1.00	28.00	93.00	2.00	7.00
76	OAK GROVE	457.0	95.80	13.0	2.70	7.0	1.40	22.00	85.00	4.00	15.00
77	OAK GROVE	399.0	97.80	9.0	1.10	9.0	1.10	22.00	85.00	4.00	15.00
78	OAK GROVE	436.0	93.20	25.0	5.30	7.0	1.50	23.00	82.00	5.00	18.00
79	OAK GROVE	393.0	90.30	26.0	6.00	16.0	3.70	22.50	82.00	5.00	18.00
80	OAK GROVE	357.0	88.60	30.0	7.40	16.0	4.00	22.50	82.00	5.00	18.00
81	OAK GROVE	331.0	87.80	26.0	6.90	20.0	5.40	16.50	77.00	5.00	23.00
82	OAK GROVE	286.0	86.10	27.0	8.10	19.0	5.70	17.50	80.00	4.50	20.00
83	OAK GROVE	261.0	83.70	34.0	10.70	17.0	5.50	15.50	77.50	4.50	22.50
84	OAK GROVE	270.0	82.60	40.0	12.20	17.0	5.20	15.00	75.00	5.00	25.00
85	OAK GROVE	278.0	81.30	49.0	14.30	15.0	4.40	15.50	73.80	5.50	26.20
86	OAK GROVE	294.0	83.00	47.0	13.30	13.0	3.70	16.00	74.40	5.50	25.60

ELEMENTARY SCHOOLS, ALL YEARS - OAKCLIFF

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	OAKCLIFF	816.0	100.00	0.0	0.00	0.0	0.00	31.00	97.00	1.00	3.00
70	OAKCLIFF	815.0	99.90	1.0	0.10	0.0	0.00	35.00	97.20	1.00	2.80
71	OAKCLIFF	777.0	99.70	1.0	0.10	1.0	0.10	35.00	97.00	1.00	3.00
72	OAKCLIFF	920.0	99.25	4.0	0.43	3.0	0.32	40.00	98.00	1.00	2.00
73	OAKCLIFF	929.0	98.62	5.0	0.53	8.0	0.85	36.00	92.00	3.00	8.00
74	OAKCLIFF	696.0	98.70	2.0	0.30	7.0	1.00	33.00	97.00	1.00	3.00
75	OAKCLIFF	608.0	96.70	5.0	0.80	16.0	2.50	35.00	95.00	2.00	5.00
76	OAKCLIFF	611.0	94.40	4.0	0.60	32.0	5.00	28.00	90.00	3.00	10.00
77	OAKCLIFF	665.0	92.70	5.0	0.70	47.0	6.60	32.00	86.00	5.00	14.00
78	OAKCLIFF	590.0	91.30	10.0	1.50	46.0	7.20	31.00	84.00	6.00	16.00
79	OAKCLIFF	565.0	91.00	10.0	1.60	46.0	7.40	31.50	87.00	6.00	16.00
80	OAKCLIFF	528.0	87.70	14.0	2.30	60.0	10.00	24.00	83.00	5.00	17.00
81	OAKCLIFF	474.0	84.60	22.0	3.90	64.0	11.50	22.00	79.00	6.00	21.00
82	OAKCLIFF	452.0	81.60	31.0	5.60	71.0	12.80	22.75	79.00	6.00	21.00
83	OAKCLIFF	371.0	76.30	36.0	7.40	79.0	16.30	19.50	76.50	6.00	23.50
84	OAKCLIFF	321.0	71.00	39.0	8.60	92.0	20.40	18.50	75.50	6.00	24.50
85	OAKCLIFF	316.0	68.40	50.0	10.80	96.0	20.80	19.00	76.00	6.00	24.00
86	OAKCLIFF	295.0	61.70	71.0	14.90	112.0	23.40	20.00	80.00	5.00	20.00

ELEMENTARY SCHOOLS, ALL YEARS - PEACHCREST

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	PEACHCREST	659.0	99.55	0.0	0.00	3.0	0.45	24.00	92.00	2.00	8.00
70	PEACHCREST	631.0	98.70	3.0	0.50	5.0	0.80	24.00	92.30	2.00	7.70
71	PEACHCREST	578.0	96.70	14.0	2.30	6.0	1.00	23.00	92.00	2.00	8.00
72	PEACHCREST	514.0	91.80	38.0	6.80	8.0	1.40	23.00	96.00	1.00	4.00
73	PEACHCREST	463.0	87.90	55.0	10.40	9.0	1.70	22.00	96.00	1.00	4.00
74	PEACHCREST	439.0	84.10	76.0	14.60	7.0	1.30	26.00	93.00	2.00	7.00
75	PEACHCREST	367.0	80.10	60.0	7.50	11.0	2.40	22.00	88.00	3.00	12.00
76	PEACHCREST	323.0	72.30	113.0	25.30	11.0	2.50	20.00	83.00	4.00	17.00
77	PEACHCREST	299.0	68.10	131.0	29.80	9.0	2.10	22.00	15.00	4.00	15.00
78	PEACHCREST	269.0	57.00	196.0	41.50	7.0	1.50	23.00	82.00	5.00	18.00
79	PEACHCREST	233.0	47.70	250.0	51.20	5.0	1.00	22.50	79.00	6.00	21.00
80	PEACHCREST	212.0	44.50	258.0	54.30	5.0	1.20	24.00	83.00	5.00	17.00
81	PEACHCREST	173.0	35.50	310.0	63.50	5.0	1.00	19.00	73.00	7.00	37.00
82	PEACHCREST	155.0	78.70	31.0	15.70	11.0	5.60	18.00	72.00	7.00	28.00
83	PEACHCREST	106.0	22.90	349.0	75.50	7.0	1.50	17.00	69.00	7.50	31.00
84	PEACHCREST	85.0	18.80	352.0	78.00	14.0	3.10	16.50	67.30	8.00	32.70
85	PEACHCREST	81.0	17.60	346.0	75.00	34.0	7.40	19.00	71.70	7.50	28.30
86	PEACHCREST	79.0	15.20	413.0	79.40	28.0	5.40	23.00	74.20	8.00	25.80

ELEMENTARY SCHOOLS, ALL YEARS - PLEASANTDALE

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	PLEASANTDALE	680.0	100.00	0.0	0.00	0.0	0.00	26.00	100.00	0.00	0.00
70	PLEASANTDALE	692.0	100.00	0.0	0.00	0.0	0.00	27.00	96.40	1.00	3.60
71	PLEASANTDALE	511.0	100.00	0.0	0.00	0.0	0.00	18.00	95.00	1.00	5.00
72	PLEASANTDALE	502.0	99.80	0.0	0.00	1.0	0.20	25.00	96.00	1.00	4.00
73	PLEASANTDALE	457.0	99.10	0.0	0.00	4.0	0.90	24.00	92.00	2.00	8.00
74	PLEASANTDALE	392.0	99.00	0.0	0.00	4.0	1.00	22.00	96.00	1.00	4.00
75	PLEASANTDALE	376.0	98.70	0.0	0.00	5.0	1.30	17.00	89.00	2.00	11.00
76	PLEASANTDALE	355.0	98.10	0.0	0.00	7.0	1.90	16.50	85.00	3.00	15.00
77	PLEASANTDALE	323.0	98.20	1.0	0.30	5.0	1.50	17.00	85.00	3.00	15.00
78	PLEASANTDALE	334.0	98.50	0.0	0.00	5.0	1.50	18.00	86.00	3.00	14.00
79	PLEASANTDALE	296.0	97.40	2.0	0.70	6.0	2.00	16.00	76.00	5.00	24.00
80	PLEASANTDALE	252.0	95.40	2.0	0.80	10.0	3.80	16.00	84.00	3.00	16.00
81	PLEASANTDALE	243.0	96.00	0.0	0.00	10.0	4.00	13.25	79.00	3.50	21.00
82	PLEASANTDALE	213.0	93.40	2.0	0.90	13.0	5.60	12.25	75.00	4.00	25.00
83	PLEASANTDALE	277.0	88.80	16.0	5.10	19.0	6.10	14.50	74.40	5.00	25.60
84	PLEASANTDALE	273.0	86.90	15.0	4.80	26.0	8.30	14.25	76.00	4.50	24.00
85	PLEASANTDALE	273.0	79.40	28.0	8.10	43.0	12.50	17.25	79.30	4.50	20.70
86	PLEASANTDALE	279.0	80.40	36.0	10.40	32.0	9.20	15.00	73.20	5.50	26.80

ELEMENTARY SCHOOLS, ALL YEARS - RAINBOW

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
70	RAINBOW	555.0	98.90	3.0	0.50	3.0	0.50	19.00	86.40	3.00	13.60
71	RAINBOW	703.0	99.30	2.0	0.30	3.0	0.40	26.00	90.00	3.00	10.00
72	RAINBOW	839.0	99.80	0.0	0.00	2.0	0.20	32.00	97.00	1.00	3.00
73	RAINBOW	901.0	99.45	1.0	0.01	4.0	0.44	38.00	93.00	3.00	7.00
74	RAINBOW	932.0	98.90	5.0	0.50	5.0	0.50	39.00	98.00	1.00	2.00
75	RAINBOW	601.0	98.50	7.0	1.10	2.0	0.30	27.00	90.00	3.00	10.00
76	RAINBOW	581.0	94.90	29.0	4.70	2.0	0.30	24.00	89.00	3.00	11.00
77	RAINBOW	538.0	84.90	92.0	14.50	4.0	0.60	29.00	85.00	5.00	15.00
78	RAINBOW	447.0	59.10	305.0	40.30	4.0	0.50	27.00	79.00	7.00	21.00
79	RAINBOW	241.0	33.30	474.0	65.60	8.0	1.10	26.00	82.00	6.50	18.00
80	RAINBOW	116.0	15.90	600.0	82.30	13.0	1.80	28.00	80.00	7.00	20.00
81	RAINBOW	73.0	10.60	605.0	88.10	9.0	1.30	25.75	75.00	8.50	25.00
82	RAINBOW	53.0	7.40	644.0	90.10	18.0	2.50	26.00	73.00	9.50	27.00
83	RAINBOW	35.0	5.00	657.0	93.10	14.0	2.00	23.75	70.00	10.00	30.00
84	RAINBOW	20.0	2.80	688.0	95.40	13.0	1.80	26.25	72.40	10.00	27.60
85	RAINBOW	14.0	1.90	708.0	96.10	15.0	2.00	27.75	71.60	11.00	28.40
86	RAINBOW	12.0	1.50	754.0	96.40	16.0	2.10	26.00	68.40	12.00	31.60

PAGE: 5

ELEMENTARY SCHOOLS, ALL YEARS - REDAN

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO	WHITE %	BLACK NO.	BLACK %
69	REDAN	246.0	79.90	59.0	19.20	3.0	1.00	16.00	84.00	3.00	16.00
70	REDAN	275.0	84.10	49.0	15.00	3.0	0.90	16.00	88.90	2.00	11.10
71	REDAN	296.0	85.80	46.0	13.30	3.0	0.90	17.00	94.00	1.00	6.00
72	REDAN	311.0	88.40	38.0	10.80	3.0	0.90	17.00	94.00	1.00	6.00
73	REDAN	429.0	92.10	33.0	7.10	4.0	0.90	18.00	95.00	1.00	5.00
74	REDAN	579.0	93.80	31.0	5.00	7.0	1.10	25.00	93.00	2.00	7.00
75	REDAN	451.0	94.00	26.0	5.40	3.0	0.60	21.00	91.00	2.00	9.00
76	REDAN	535.0	93.40	31.0	5.40	7.0	1.30	24.00	89.00	3.00	11.00
77	REDAN	630.0	94.30	30.0	4.50	8.0	1.10	27.00	84.00	5.00	16.00
78	REDAN	815.0	94.30	38.0	4.40	11.0	1.20	32.00	82.00	7.00	18.00
79	REDAN	956.0	92.50	62.0	6.00	15.0	1.50	38.50	81.00	9.00	19.00
80	REDAN	636.0	89.80	58.0	8.20	14.0	2.00	27.50	82.00	6.00	18.00
81	REDAN	687.0	87.00	77.0	9.70	26.0	3.30	30.75	77.00	9.00	23.00
82	REDAN	739.0	86.00	90.0	10.50	30.0	3.50	31.25	78.00	9.00	22.00
83	REDAN	724.0	84.40	102.0	11.90	32.0	3.70	32.25	76.00	10.00	24.00
84	REDAN	810.0	82.80	127.0	13.00	41.0	4.20	34.00	72.30	13.00	27.70
85	REDAN	885.0	79.80	175.0	15.80	49.0	4.40	37.75	72.20	14.50	27.80
86	REDAN	883.0	70.20	292.0	23.20	82.0	6.50	40.00	75.50	13.00	24.50

334

PAGE: 89

ELEMENTARY SCHOOLS, ALL YEARS - REHOBOTH

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	REHOBOTH	0.0	0.00	0.0	0.00	0.0	0.00	27.00	96.00	1.00	4.00
71	REHOBOTH	680.0	99.40	3.0	0.40	1.0	0.10	27.00	96.00	1.00	4.00
72	REHOBOTH	632.0	99.70	1.0	0.20	1.0	0.20	27.00	93.00	1.00	7.00
73	REHOBOTH	581.0	99.70	1.0	0.20	1.0	0.20	24.00	96.00	1.00	4.00
74	REHOBOTH	585.0	99.80	0.0	0.00	1.0	0.20	25.00	96.00	1.00	4.00
75	REHOBOTH	519.0	98.90	0.0	0.00	6.0	1.10	22.00	92.00	2.00	8.00
76	REHOBOTH	436.0	98.40	0.0	0.00	7.0	1.60	18.00	86.00	3.00	14.00
77	REHOBOTH	421.0	98.80	0.0	0.00	5.0	1.20	18.00	82.00	4.00	18.00
78	REHOBOTH	388.0	98.70	1.0	0.30	4.0	1.10	17.00	77.00	5.00	23.00
79	REHOBOTH	371.0	98.40	0.0	0.00	6.0	1.60	19.00	83.00	4.00	17.00
80	REHOBOTH	339.0	96.60	1.0	0.30	11.0	3.20	19.00	83.00	4.00	17.00
81	REHOBOTH	313.0	94.60	2.0	0.60	16.0	4.80	16.50	80.00	4.00	20.00
82	REHOBOTH	312.0	94.30	2.0	0.60	17.0	5.10	16.00	80.00	4.00	20.00

335

PAGE: 90

ELEMENTARY SCHOOLS, ALL YEARS - ROCK CHAPEL

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	ROCK CHAPEL	191.0	82.70	40.0	17.30	0.0	0.00	12.00	92.00	1.00	8.00
70	ROCK CHAPEL	182.0	81.60	41.0	18.40	0.0	0.00	13.00	86.70	2.00	13.30
71	ROCK CHAPEL	191.0	83.40	38.0	16.60	0.0	0.00	14.00	93.00	1.00	7.00
72	ROCK CHAPEL	199.0	86.50	31.0	13.50	0.0	0.00	15.00	94.00	1.00	6.00
73	ROCK CHAPEL	192.0	88.50	25.0	11.50	0.0	0.00	13.00	93.00	1.00	7.00
74	ROCK CHAPEL	295.0	91.60	26.0	8.10	1.0	0.30	16.00	94.00	1.00	6.00
75	ROCK CHAPEL	321.0	90.90	30.0	8.50	2.0	0.60	17.00	89.00	2.00	11.00
76	ROCK CHAPEL	358.0	93.00	25.0	6.50	2.0	0.60	16.00	84.00	3.00	16.00
77	ROCK CHAPEL	373.0	94.00	23.0	5.80	1.0	0.30	18.00	86.00	3.00	14.00
78	ROCK CHAPEL	397.0	95.70	16.0	3.90	2.0	0.40	18.00	82.00	4.00	18.00
79	ROCK CHAPEL	395.0	93.20	24.0	5.70	5.0	1.20	17.00	77.00	5.00	23.00
80	ROCK CHAPEL	416.0	92.70	26.0	5.80	7.0	1.50	20.00	80.00	5.00	20.00
81	ROCK CHAPEL	402.0	92.20	27.0	6.20	7.0	1.60	18.50	76.00	6.00	24.00
82	ROCK CHAPEL	454.0	92.80	30.0	6.20	5.0	1.00	19.12	76.00	6.00	24.00
83	ROCK CHAPEL	445.0	92.90	30.0	6.30	4.0	0.80	20.25	80.00	5.00	20.00
84	ROCK CHAPEL	444.0	93.90	25.0	5.30	4.0	0.80	19.75	79.80	5.00	20.20
85	ROCK CHAPEL	457.0	94.40	20.0	4.10	7.0	1.40	20.75	80.60	5.00	19.40
86	ROCK CHAPEL	522.0	91.10	39.0	6.80	11.0	1.90	23.00	79.30	6.00	20.70

PAGE: 91

ELEMENTARY SCHOOLS, ALL YEARS - ROCKBRIDGE

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
72	ROCKBRIDGE	585.0	100.00	0.0	0.00	0.0	0.00	26.00	96.00	1.00	4.00
73	ROCKBRIDGE	698.0	99.40	1.0	0.20	3.0	0.40	29.00	94.00	2.00	6.00
74	ROCKBRIDGE	821.0	99.50	1.0	0.10	3.0	0.30	36.00	97.00	1.00	3.00
75	ROCKBRIDGE	876.0	98.90	1.0	0.10	9.0	1.10	39.00	93.00	3.00	7.00
76	ROCKBRIDGE	894.0	98.70	0.0	0.00	12.0	1.30	40.00	93.00	3.00	7.00
77	ROCKBRIDGE	891.0	98.80	0.0	0.00	11.0	1.30	36.00	84.00	7.00	16.00
78	ROCKBRIDGE	967.0	97.70	5.0	0.50	18.0	1.80	38.00	81.00	9.00	19.00
79	ROCKBRIDGE	944.0	97.90	6.0	0.60	14.0	1.40	35.00	79.00	9.50	21.00
80	ROCKBRIDGE	932.0	97.40	9.0	0.90	16.0	1.60	35.50	80.00	9.00	20.00
81	ROCKBRIDGE	861.0	96.90	7.0	0.80	21.0	2.30	32.50	77.00	9.50	23.00
82	ROCKBRIDGE	830.0	96.50	8.0	1.00	22.0	2.50	31.00	76.00	10.00	24.00
83	ROCKBRIDGE	724.0	96.10	11.0	1.50	18.0	2.40	27.00	76.00	8.50	24.00
84	ROCKBRIDGE	706.0	92.30	23.0	3.70	31.0	4.00	27.25	74.10	9.50	25.90
85	ROCKBRIDGE	705.0	91.30	26.0	3.40	41.0	5.30	27.25	72.20	10.50	27.80
86	ROCKBRIDGE	705.0	90.50	32.0	4.10	42.0	5.40	27.00	71.10	11.00	28.90

PAGE: 92

ELEMENTARY SCHOOLS, ALL YEARS - ROWLAND

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	ROWLAND	653.0	99.70	2.0	0.30	0.0	0.00	23.00	92.00	2.00	8.00
70	ROWLAND	769.0	99.90	1.0	0.10	0.0	0.00	26.00	92.90	2.00	7.10
71	ROWLAND	651.0	99.50	1.0	0.20	2.0	0.30	24.00	92.00	2.00	8.00
72	ROWLAND	670.0	99.70	0.0	0.00	2.0	0.30	28.00	97.00	1.00	3.00
73	ROWLAND	658.0	99.40	0.0	0.00	4.0	0.60	28.00	93.00	2.00	7.00
74	ROWLAND	639.0	98.60	1.0	0.20	8.0	1.20	29.00	97.00	1.00	3.00
75	ROWLAND	649.0	98.80	3.0	0.50	5.0	0.80	29.00	94.00	2.00	0.60
76	ROWLAND	645.0	98.80	2.0	0.30	6.0	0.90	27.00	90.00	3.00	10.00
77	ROWLAND	611.0	98.70	1.0	0.20	7.0	1.10	25.00	86.00	4.00	14.00
78	ROWLAND	636.0	96.70	11.0	1.70	11.0	1.70	26.00	81.00	6.00	19.00
79	ROWLAND	591.0	95.30	13.0	2.10	16.0	2.60	27.00	81.00	6.50	19.00
80	ROWLAND	582.0	93.90	16.0	2.60	22.0	3.60	24.00	79.00	6.50	21.00
81	ROWLAND	518.0	91.40	26.0	4.60	23.0	4.10	22.00	77.00	6.50	23.00
82	ROWLAND	469.0	87.00	43.0	8.00	27.0	5.00	20.75	76.00	6.50	24.00
83	ROWLAND	406.0	80.90	72.0	14.30	24.0	4.80	20.00	75.00	6.50	25.00
84	ROWLAND	378.0	72.60	111.0	21.30	32.0	6.10	20.25	75.70	6.50	24.30
85	ROWLAND	325.0	61.10	167.0	31.40	40.0	7.50	20.50	73.20	7.50	26.80
86	ROWLAND	320.0	49.20	276.0	42.50	54.0	8.30	25.00	78.10	7.00	21.90

PAGE: 93

ELEMENTARY SCHOOLS, ALL YEARS - SAGAMORE HILLS

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	SAGAMORE HILLS	568.0	100.00	0.0	0.00	0.0	0.00	23.00	92.00	2.00	8.00
70	SAGAMORE HILLS	521.0	100.00	0.0	0.00	0.0	0.00	22.00	91.70	2.00	8.30
71	SAGAMORE HILLS	470.0	100.00	0.0	0.00	0.0	0.00	23.00	96.00	1.00	4.00
72	SAGAMORE HILLS	557.0	99.60	0.0	0.00	2.0	0.40	26.00	96.00	1.00	4.00
73	SAGAMORE HILLS	492.0	99.60	0.0	0.00	2.0	0.40	21.00	95.00	1.00	5.00
74	SAGAMORE HILLS	488.0	98.00	0.0	0.00	10.0	2.00	23.00	96.00	1.00	4.00
75	SAGAMORE HILLS	572.0	98.50	0.0	0.00	9.0	1.50	26.00	93.00	2.00	7.00
76	SAGAMORE HILLS	536.0	97.50	0.0	0.00	14.0	2.50	25.00	89.00	3.00	11.00
77	SAGAMORE HILLS	517.0	98.50	1.0	0.20	7.0	1.40	23.00	85.00	4.00	15.00
78	SAGAMORE HILLS	467.0	97.90	5.0	1.00	5.0	1.00	22.00	82.00	5.00	18.00
79	SAGAMORE HILLS	443.0	97.10	8.0	1.80	5.0	1.10	23.00	82.00	5.00	18.00
80	SAGAMORE HILLS	382.0	89.70	33.0	7.70	11.0	2.50	21.00	77.00	6.00	23.00
81	SAGAMORE HILLS	328.0	82.40	56.0	14.10	14.0	3.50	17.50	74.00	6.00	26.00
82	SAGAMORE HILLS	302.0	76.80	77.0	19.60	14.0	3.60	17.25	77.00	5.00	23.00
83	SAGAMORE HILLS	276.0	75.00	70.0	19.00	22.0	6.00	16.75	77.00	5.00	23.00
84	SAGAMORE HILLS	279.0	72.70	81.0	21.10	24.0	6.20	16.25	73.00	6.00	27.00
85	SAGAMORE HILLS	266.0	67.20	94.0	23.70	36.0	9.10	16.50	73.30	6.00	26.70
86	SAGAMORE HILLS	254.0	68.00	92.0	24.50	28.0	7.50	16.00	72.70	6.00	27.30

PAGE: 94

ELEMENTARY SCHOOLS, ALL YEARS - SEXTON WOODS

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	SEXTON WOODS	887.0	99.70	0.0	0.00	3.0	0.30	25.00	93.00	2.00	7.00
70	SEXTON WOODS	724.0	98.00	13.0	1.80	2.0	0.20	31.00	91.20	3.00	8.80
71	SEXTON WOODS	647.0	97.90	12.0	1.80	2.0	0.30	26.00	93.00	2.00	7.00
72	SEXTON WOODS	565.0	96.60	17.0	2.90	3.0	0.50	25.00	93.00	2.00	7.00
73	SEXTON WOODS	460.0	98.10	8.0	1.70	1.0	0.20	21.00	91.00	2.00	9.00
74	SEXTON WOODS	446.0	98.20	6.0	1.30	2.0	0.40	19.00	90.00	2.00	10.00

PAGE: 95

ELEMENTARY SCHOOLS, ALL YEARS - SHALLOWFORD

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	SHALLOWFORD	680.0	100.00	0.0	0.00	0.0	0.00	26.00	96.00	1.00	4.00
70	SHALLOWFORD	823.0	99.90	1.0	0.10	0.0	0.00	32.00	94.10	2.00	5.90
71	SHALLOWFORD	823.0	100.00	0.0	0.00	0.0	0.00	31.00	94.00	2.00	6.00
72	SHALLOWFORD	815.0	100.00	0.0	0.00	0.0	0.00	33.00	97.00	1.00	3.00
73	SHALLOWFORD	778.0	100.00	0.0	0.00	0.0	0.00	32.00	94.00	2.00	6.00
74	SHALLOWFORD	753.0	100.00	0.0	0.00	0.0	0.00	33.00	97.00	1.00	3.00
75	SHALLOWFORD	692.0	100.00	0.0	0.00	0.0	0.00	28.00	90.00	3.00	10.00
76	SHALLOWFORD	642.0	99.70	0.0	0.00	2.0	0.30	25.00	86.00	4.00	14.00
77	SHALLOWFORD	620.0	99.70	0.0	0.00	2.0	0.30	25.00	83.00	5.00	17.00
78	SHALLOWFORD	572.0	100.00	0.0	0.00	0.0	0.00	24.00	83.00	5.00	17.00
79	SHALLOWFORD	550.0	99.60	0.0	0.00	2.0	0.30	24.00	86.00	4.00	14.00
80	SHALLOWFORD	446.0	99.30	1.0	0.20	2.0	0.40	22.00	80.00	5.50	20.00
81	SHALLOWFORD	381.0	97.70	6.0	1.50	3.0	0.80	17.25	78.00	5.00	22.00
82	SHALLOWFORD	326.0	96.20	5.0	1.50	8.0	2.40	15.50	76.00	5.00	24.00
83	SHALLOWFORD	282.0	92.80	6.0	2.00	16.0	5.20	14.00	72.00	5.50	28.00
84	SHALLOWFORD	284.0	93.70	6.0	2.00	13.0	4.30	14.25	72.20	5.50	27.80
85	SHALLOWFORD	258.0	90.80	12.0	4.20	14.0	4.90	13.75	73.30	5.00	26.70

PAGE: 96

ELEMENTARY SCHOOLS, ALL YEARS - SKY HAVEN

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	SKY HAVEN	746.0	96.60	25.0	3.20	1.0	0.10	27.00	93.00	2.00	7.00
70	SKY HAVEN	700.0	93.70	47.0	6.30	0.0	0.00	27.00	90.00	3.00	10.00
71	SKY HAVEN	677.0	87.70	92.0	11.90	3.0	0.40	28.00	88.00	4.00	12.00
72	SKY HAVEN	476.0	58.10	342.0	41.80	1.0	0.10	29.00	76.00	9.00	24.00
73	SKY HAVEN	291.0	37.40	487.0	62.60	0.0	0.00	29.00	76.00	9.00	24.00
74	SKY HAVEN	169.0	20.20	667.0	79.80	0.0	0.00	31.00	76.00	10.00	24.00
75	SKY HAVEN	74.0	8.70	773.0	91.30	0.0	0.00	25.00	89.00	13.00	11.00
76	SKY HAVEN	53.0	6.00	824.0	94.00	0.0	0.00	30.00	73.00	11.00	27.00
77	SKY HAVEN	30.0	3.20	918.0	96.60	2.0	0.22	34.00	76.00	11.00	24.00
78	SKY HAVEN	34.0	3.60	894.0	95.80	5.0	0.50	34.00	77.00	10.00	23.00
79	SKY HAVEN	35.0	3.80	879.0	96.10	1.0	0.10	33.00	79.00	9.00	21.00
80	SKY HAVEN	31.0	3.60	828.0	96.40	0.0	0.00	31.00	78.00	9.00	22.00
81	SKY HAVEN	31.0	3.60	829.0	96.20	2.0	0.20	30.00	72.00	11.50	28.00
82	SKY HAVEN	27.0	3.20	808.0	96.50	2.0	0.20	30.00	72.00	11.50	28.00
83	SKY HAVEN	22.0	2.70	798.0	96.80	4.0	0.50	25.00	64.00	14.00	36.00
85	SKY HAVEN	17.0	2.00	849.0	98.00	0.0	0.00	30.50	67.80	14.50	32.20
86	SKY HAVEN	21.0	2.40	851.0	97.20	3.0	0.30	28.00	65.10	15.00	34.90

PAGE: 2

ELEMENTARY SCHOOLS, ALL YEARS - SKYLAND

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	SKYLAND	780.0	99.60	3.0	0.40	0.0	0.00	30.00	97.00	1.00	3.00
70	SKYLAND	765.0	99.90	0.0	0.00	1.0	0.10	31.00	96.90	1.00	3.10
71	SKYLAND	760.0	99.90	0.0	0.00	1.0	0.10	30.00	97.00	1.00	3.00
72	SKYLAND	589.0	99.70	0.0	0.00	2.0	0.30	31.00	97.00	1.00	3.00
73	SKYLAND	560.0	99.80	1.0	0.20	0.0	0.00	27.00	93.00	2.00	7.00
74	SKYLAND	633.0	97.50	2.0	0.30	14.0	2.20	34.00	97.00	1.00	3.00
75	SKYLAND	574.0	97.30	1.0	0.20	15.0	2.50	32.00	94.00	2.00	6.00
76	SKYLAND	536.0	97.50	2.0	0.40	12.0	2.20	26.00	89.00	3.00	11.00
77	SKYLAND	519.0	97.56	3.0	0.56	10.0	1.88	26.00	87.00	4.00	13.00
78	SKYLAND	472.0	93.80	4.0	0.80	27.0	5.40	25.00	83.00	5.00	17.00
79	SKYLAND	442.0	92.90	12.0	2.50	22.0	4.60	25.50	84.00	5.00	16.00
80	SKYLAND	365.0	88.00	11.0	2.70	39.0	9.40	24.00	83.00	5.00	17.00
81	SKYLAND	341.0	88.30	9.0	2.30	36.0	9.30	16.75	74.00	6.00	26.00
82	SKYLAND	354.0	85.90	11.0	2.70	47.0	11.50	18.25	78.00	5.00	22.00
83	SKYLAND	311.0	83.80	13.0	3.50	47.0	12.70	17.00	77.00	5.00	23.00

PAGE: 99

ELEMENTARY SCHOOLS, ALL YEARS - SMOKE RISE

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	SMOK RISE	517.0	88.20	67.0	11.40	2.0	0.30	21.00	91.00	2.00	9.00
70	SMOKE RISE	739.0	91.50	67.0	8.30	2.0	0.20	29.00	93.50	2.00	6.50
71	SMOKE RISE	801.0	92.30	65.0	7.50	2.0	0.20	33.00	85.00	6.00	15.00
72	SMOKE RISE	888.0	92.60	68.0	7.10	3.0	0.30	37.00	95.00	2.00	5.00
73	SMOKE RISE	821.0	92.60	60.0	6.70	6.0	0.70	40.00	93.00	3.00	7.00
74	SMOKE RISE	754.0	93.30	48.0	5.90	6.0	0.70	34.00	94.00	2.00	6.00
75	SMOKE RISE	704.0	92.50	51.0	6.70	6.0	0.70	31.00	91.00	3.00	9.00
76	SMOKE RISE	703.0	93.50	41.0	5.50	8.0	1.00	31.00	89.00	4.00	11.00
77	SMOKE RISE	694.0	93.80	38.0	5.10	8.0	1.00	29.00	83.00	6.00	17.00
78	SMOKE RISE	725.0	93.30	43.0	5.50	9.0	1.20	31.00	84.00	6.00	16.00
79	SMOKE RISE	725.0	93.30	38.0	4.90	14.0	1.80	29.50	81.00	7.00	19.00
80	SMOKE RISE	734.0	93.00	33.0	4.20	22.0	2.80	30.50	79.00	8.00	21.00
81	SMOKE RISE	700.0	91.90	42.0	5.50	20.0	2.70	29.00	78.00	8.00	22.00
82	SMOKE RISE	643.0	89.10	49.0	6.80	30.0	4.10	26.00	76.00	8.00	24.00
83	SMOKE RISE	678.0	86.80	77.0	9.90	26.0	3.30	28.50	78.00	8.00	22.00
84	SMOKE RISE	630.0	88.20	63.0	8.80	21.0	2.90	28.25	77.90	8.00	22.10
85	SMOKE RISE	667.0	85.60	87.0	11.20	25.0	3.20	29.25	78.50	8.00	21.50
86	SMOKE RISE	629.0	83.00	98.0	13.00	30.0	4.00	29.00	80.60	7.00	19.40

PAGE: 100

ELEMENTARY SCHOOLS, ALL YEARS - SNAPPINGER

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	SNAPPINGER	670.0	99.90	0.0	0.00	1.0	0.10	24.00	92.00	2.00	8.00
70	SNAPPINGER	884.0	99.70	0.0	0.00	3.0	0.30	32.00	94.10	2.00	5.90
71	SNAPPINGER	912.0	99.10	0.0	0.00	8.0	0.90	35.00	97.00	1.00	3.00
72	SNAPPINGER	867.0	99.00	4.0	0.50	5.0	0.60	32.00	91.00	3.00	9.00
73	SNAPPINGER	798.0	96.40	24.0	2.90	6.0	0.70	30.00	88.00	4.00	12.00
74	SNAPPINGER	710.0	91.40	62.0	8.00	5.0	0.60	34.00	94.00	2.00	6.00
75	SNAPPINGER	578.0	76.80	166.0	22.00	9.0	1.20	33.00	92.00	3.00	8.00
76	SNAPPINGER	424.0	53.90	350.0	44.50	12.0	1.50	34.00	87.00	5.00	13.00
77	SNAPPINGER	287.0	34.10	544.0	64.70	10.0	1.20	35.00	81.00	7.00	19.00
78	SNAPPINGER	156.9	18.40	678.0	80.00	13.0	1.50	33.00	80.00	8.00	20.00
79	SNAPPINGER	62.0	7.00	816.0	92.40	5.0	0.60	34.00	79.00	9.00	21.00
80	SNAPPINGER	42.0	4.80	822.0	94.30	8.0	0.90	36.50	78.00	10.00	22.00
81	SNAPPINGER	24.0	2.90	793.0	96.00	9.0	1.10	32.25	79.00	8.50	21.00
82	SNAPPINGER	21.0	2.50	799.0	96.60	7.0	0.80	29.37	75.00	10.00	25.00
83	SNAPPINGER	12.0	1.60	742.0	97.40	8.0	1.00	24.25	66.00	12.50	34.00
84	SNAPPINGER	26.0	3.10	793.0	95.90	8.0	1.00	27.75	68.90	12.50	31.10
85	SNAPPINGER	23.0	2.80	792.0	96.20	8.0	1.00	27.50	69.60	12.00	30.40
86	SNAPPINGER	22.0	2.70	778.0	96.60	5.0	0.60	25.00	67.60	12.00	32.40

PAGE: 101

ELEMENTARY SCHOOLS, ALL YEARS - STONE MILL

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
75	STONE MILL	517.0	99.60	2.0	0.40	0.0	0.00	24.00	89.00	3.00	11.00
76	STONE MILL	469.0	99.80	1.0	0.20	0.0	0.00	21.00	88.00	3.00	12.00
77	STONE MILL	508.0	99.00	1.0	0.20	4.0	0.80	20.00	83.00	4.00	17.00
78	STONE MILL	552.0	97.20	6.0	1.10	10.0	1.80	22.00	81.00	5.00	19.00
79	STONE MILL	491.0	95.70	14.0	2.70	8.0	1.60	22.00	81.00	5.00	19.00
80	STONE MILL	542.0	95.10	13.0	2.30	15.0	2.70	22.00	81.00	5.00	19.00
81	STONE MILL	556.0	93.40	25.0	4.20	14.0	2.30	23.00	75.00	7.50	25.00
82	STONE MILL	454.0	93.00	18.0	3.70	16.0	3.30	20.50	77.00	6.00	23.00
83	STONE MILL	389.0	92.00	15.0	3.50	19.0	4.50	19.75	83.00	4.00	17.00
84	STONE MILL	390.0	90.30	20.0	4.60	22.0	5.10	19.00	79.20	5.00	20.80
85	STONE MILL	402.0	83.10	54.0	11.10	28.0	5.80	19.00	76.00	6.00	24.00
86	STONE MILL	288.0	74.00	62.0	15.90	39.0	10.00	17.00	77.30	5.00	22.70

PAGE: 1

ELEMENTARY SCHOOLS, ALL YEARS - STONE MOUNTAIN

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	STONE MOUNTAIN	734.0	84.00	138.0	15.80	2.0	0.20	36.00	97.00	1.00	3.00
70	STONE MOUNTAIN	960.0	88.50	122.0	11.20	3.0	0.30	38.00	97.40	1.00	2.60
71	STONE MOUNTAIN	916.0	89.30	108.0	10.50	2.0	0.20	39.00	95.00	2.00	5.00
72	STONE MOUNTAIN	718.0	88.00	96.0	11.80	2.0	0.20	34.00	97.00	1.00	3.00
73	STONE MOUNTAIN	964.0	90.80	88.0	8.30	10.0	0.90	33.00	92.00	3.00	8.00
74	STONE MOUNTAIN	958.0	90.50	94.0	8.90	7.0	0.70	43.00	98.00	1.00	2.00
75	STONE MOUNTAIN	630.0	88.90	76.0	10.70	3.0	0.40	26.00	93.00	2.00	7.00
76	STONE MOUNTAIN	636.0	88.50	79.0	11.00	4.0	0.60	29.00	91.00	3.00	9.00
77	STONE MOUNTAIN	674.0	88.30	82.0	10.80	7.0	0.90	31.00	86.00	5.00	14.00
78	STONE MOUNTAIN	664.0	89.80	74.0	9.70	4.0	0.50	31.00	82.00	7.00	18.00
79	STONE MOUNTAIN	636.0	86.90	87.0	11.90	9.0	1.10	30.50	84.00	6.00	16.00
80	STONE MOUNTAIN	619.0	87.10	79.0	11.10	13.0	1.80	30.50	81.00	7.00	19.00
81	STONE MOUNTAIN	617.0	83.60	95.0	12.90	26.0	3.60	28.25	77.00	8.50	23.00
82	STONE MOUNTAIN	631.0	83.00	99.0	13.00	30.0	3.90	27.50	75.00	9.00	25.00
83	STONE MOUNTAIN	583.0	83.20	92.0	13.10	26.0	3.60	27.00	76.00	8.50	24.00
84	STONE MOUNTAIN	585.0	80.60	110.0	15.10	31.0	4.30	27.50	75.30	9.00	24.70
85	STONE MOUNTAIN	647.0	79.10	132.0	16.10	39.0	4.80	27.75	72.50	10.50	27.50
86	STONE MOUNTAIN	633.0	79.00	146.0	18.20	22.0	2.70	28.00	72.00	11.00	28.00

PAGE: 104

ELEMENTARY SCHOOLS, ALL YEARS - STONEVIEW

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	STONEVIEW	382.0	49.00	397.0	51.00	0.0	0.00	34.00	87.00	5.00	13.00
70	STONEVIEW	438.0	51.80	407.0	48.20	0.0	0.00	32.00	84.20	6.00	15.80
71	STONEVIEW	442.0	51.90	406.0	47.70	3.0	0.40	34.00	81.00	7.00	19.00
72	STONEVIEW	463.0	53.30	401.0	46.10	5.0	0.50	33.00	80.00	8.00	20.00
73	STONEVIEW	415.0	51.60	386.0	48.00	3.0	0.40	34.00	81.00	8.00	19.00
74	STONEVIEW	482.0	53.10	423.0	46.60	3.0	0.30	35.00	80.00	9.00	20.00
75	STONEVIEW	411.0	56.10	320.0	43.70	2.0	0.20	28.00	74.00	10.00	26.00
76	STONEVIEW	460.0	59.60	310.0	40.20	2.0	0.30	30.00	81.00	7.00	19.00
77	STONEVIEW	437.0	61.30	275.0	38.60	1.0	0.10	29.00	81.00	7.00	19.00
78	STONEVIEW	422.0	59.90	281.0	39.90	2.0	0.30	31.00	82.00	7.00	18.00
79	STONEVIEW	403.0	59.80	269.0	39.90	2.0	0.30	31.50	84.00	6.00	16.00
80	STONEVIEW	352.0	57.20	261.0	42.40	2.0	0.30	29.50	79.00	8.00	21.00
81	STONEVIEW	331.0	53.50	286.0	46.20	2.0	0.40	26.13	77.00	7.87	23.00
82	STONEVIEW	354.0	54.50	286.0	44.00	9.0	1.50	25.38	77.00	7.37	23.00
83	STONEVIEW	305.0	52.20	268.0	45.90	11.0	1.90	23.25	72.00	9.00	28.00
84	STONEVIEW	367.0	51.90	312.0	44.10	28.0	4.00	25.75	74.10	9.00	25.90
85	STONEVIEW	363.0	48.70	351.0	47.10	31.0	4.20	26.75	72.80	10.00	27.20
86	STONEVIEW	384.0	44.30	459.0	53.00	23.0	2.60	26.00	72.00	10.00	28.00

PAGE: 105

ELEMENTARY SCHOOLS, ALL YEARS - TERRY HILL

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	TERRY HILL	188.0	23.20	617.0	76.40	3.0	0.40	25.00	78.00	7.00	22.00
70	TERRY HILL	51.0	5.90	813.0	94.00	1.0	0.10	27.00	67.50	13.00	32.50
71	TERRY HILL	45.0	5.30	811.0	94.60	1.0	0.10	29.00	78.00	8.00	22.00
72	TERRY HILL	26.0	3.10	821.0	96.70	2.0	0.20	23.00	64.00	13.00	36.00
73	TERRY HILL	20.0	2.50	786.0	97.30	2.0	0.20	22.00	63.00	13.00	37.00
74	TERRY HILL	18.0	2.30	765.0	97.20	4.0	0.50	16.00	44.00	20.00	56.00
75	TERRY HILL	9.0	1.20	724.0	98.20	4.0	0.50	16.00	50.00	16.00	50.00
76	TERRY HILL	6.0	0.80	761.0	98.60	5.0	0.60	18.00	53.00	16.00	47.00
77	TERRY HILL	6.0	0.80	732.0	98.10	8.0	1.10	26.00	72.00	10.00	28.00
78	TERRY HILL	3.0	0.50	625.0	99.00	3.0	0.50	24.00	73.00	9.00	27.00
79	TERRY HILL	5.0	0.80	609.0	99.00	1.0	0.20	21.50	70.00	9.00	30.00
80	TERRY HILL	5.0	0.90	563.0	99.10	0.0	0.00	23.00	77.00	7.00	23.00
81	TERRY HILL	3.0	0.50	551.0	99.50	0.0	0.00	21.00	71.00	8.75	29.00
82	TERRY HILL	5.0	1.00	494.0	98.80	1.0	0.20	18.00	64.00	10.00	36.00
83	TERRY HILL	4.0	0.70	579.0	98.80	3.0	0.50	22.25	71.00	9.00	29.00
84	TERRY HILL	5.0	0.80	629.0	98.40	5.0	0.80	22.00	65.70	11.50	34.30
85	TERRY HILL	12.0	1.80	646.0	97.40	5.0	0.80	23.75	70.40	10.00	29.60
86	TERRY HILL	7.0	1.00	678.0	98.40	4.0	0.60	20.00	59.00	14.00	41.00

PAGE: 2

ELEMENTARY SCHOOLS, ALL YEARS - TILSON

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	TILSON	479.0	84.00	91.0	16.00	0.0	0.00	23.00	96.00	1.00	4.00
70	TILSON	385.0	65.80	200.0	34.20	0.0	0.00	22.00	84.60	4.00	15.40
71	TILSON	225.0	36.50	391.0	63.50	0.0	0.00	22.00	85.00	4.00	15.00
72	TILSON	63.0	10.40	545.0	89.60	0.0	0.00	25.00	86.00	4.00	14.00
73	TILSON	24.0	3.60	640.0	96.40	0.0	0.00	29.00	85.00	5.00	15.00
74	TILSON	8.0	1.10	710.0	98.90	0.0	0.00	16.00	47.00	18.00	53.00
75	TILSON	6.0	0.80	713.0	99.20	0.0	0.00	21.00	60.00	14.00	40.00
76	TILSON	7.0	1.00	728.0	99.00	0.0	0.00	19.00	53.00	17.00	47.00
77	TILSON	6.0	0.90	697.0	99.10	0.0	0.00	27.00	71.00	11.00	29.00
78	TILSON	3.0	0.50	635.0	99.50	0.0	0.00	27.00	75.00	9.00	25.00
79	TILSON	5.0	0.70	677.0	99.10	1.0	0.10	29.00	78.00	8.00	22.00
80	TILSON	2.0	0.30	652.0	99.70	0.0	0.00	29.00	78.00	8.00	22.00
81	TILSON	3.0	0.50	632.0	99.50	0.0	0.00	24.00	76.00	7.75	24.00
82	TILSON	1.0	0.20	577.0	99.80	0.0	0.00	24.00	77.00	7.37	23.00
83	TILSON	2.0	0.30	623.0	99.70	0.0	0.00	23.50	73.00	8.50	27.00
84	TILSON	2.0	0.30	578.0	99.70	0.0	0.00	22.00	68.80	10.00	31.20
85	TILSON	3.0	0.50	616.0	99.50	0.0	0.00	22.75	68.40	10.50	31.60
86	TILSON	2.0	0.30	658.0	99.50	1.0	0.10	22.00	65.00	12.00	35.00

PAGE: 108

ELEMENTARY SCHOOLS, ALL YEARS - TONEY

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	TONEY	930.0	99.90	0.0	0.00	1.0	0.10	35.00	90.00	4.00	10.00
70	TONEY	983.0	97.50	24.0	2.40	1.0	0.10	37.00	90.20	4.00	9.80
71	TONEY	839.0	90.40	89.0	9.60	0.0	0.00	34.00	87.00	5.00	13.00
72	TONEY	389.0	42.20	532.0	57.70	1.0	0.10	34.00	83.00	7.00	17.00
73	TONEY	148.0	15.90	779.0	83.70	4.0	0.40	33.00	83.00	7.00	17.00
74	TONEY	67.0	7.50	824.0	92.00	5.0	0.60	32.00	71.00	13.00	29.00
75	TONEY	29.0	3.30	845.0	96.00	6.0	0.70	25.00	61.00	16.00	39.00
76	TONEY	27.0	2.90	904.0	96.60	5.0	0.50	26.00	58.00	19.00	42.00
77	TONEY	26.0	2.60	987.0	97.00	5.0	0.50	32.00	67.00	16.00	33.00
78	TONEY	15.0	1.60	931.0	97.90	5.0	0.50	33.00	72.00	13.00	28.00
79	TONEY	12.0	1.30	929.0	98.10	6.0	0.60	31.00	70.00	13.00	30.00
80	TONEY	8.0	1.00	830.0	98.80	2.0	0.20	29.00	69.00	13.00	31.00
81	TONEY	8.0	1.00	763.0	98.60	3.0	0.40	26.50	68.00	12.75	32.00
82	TONEY	14.0	1.80	757.0	98.10	1.0	0.10	26.87	70.00	11.75	30.00
83	TONEY	15.0	2.10	702.0	97.80	1.0	0.10	24.75	66.00	12.50	34.00
84	TONEY	13.0	2.00	647.0	98.00	0.0	0.00	24.50	68.10	11.50	31.90
85	TONEY	13.0	1.80	719.0	97.70	4.0	0.50	25.75	64.80	14.00	35.20
86	TONEY	10.0	1.40	694.0	97.70	6.0	0.80	23.00	52.00	14.00	38.00

PAGE: 1

ELEMENTARY SCHOOLS, ALL YEARS - TUCKER

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	TUCKER	0.0	0.00	0.0	0.00	0.0	0.00	25.00	96.00	1.00	4.00
70	TUCKER	0.0	0.00	0.0	0.00	0.0	0.00	26.00	96.00	1.00	4.00
71	TUCKER	497.0	99.80	0.0	0.00	1.0	0.20	20.00	95.00	1.00	5.00
72	TUCKER	596.0	99.80	0.0	0.00	1.0	0.20	24.00	96.00	1.00	4.00
73	TUCKER	537.0	99.80	0.0	0.00	1.0	0.20	24.00	92.00	2.00	8.00
74	TUCKER	506.0	99.20	0.0	0.00	4.0	0.80	23.00	96.00	1.00	4.00
75	TUCKER	453.0	99.10	0.0	0.00	4.0	0.90	21.00	91.00	2.00	9.00
76	TUCKER	445.0	98.90	0.0	0.00	5.0	1.10	19.00	86.00	3.00	14.00
77	TUCKER	422.0	98.80	0.0	0.00	5.0	1.10	19.00	83.00	4.00	17.00
78	TUCKER	468.0	98.70	1.0	0.20	4.0	0.90	21.00	84.00	4.00	16.00
79	TUCKER	442.0	98.90	1.0	0.20	4.0	0.90	23.00	85.00	4.00	15.00
80	TUCKER	403.0	98.10	1.0	0.20	7.0	1.70	21.00	81.00	5.00	19.00
81	TUCKER	351.0	97.80	5.0	1.40	3.0	0.80	16.00	65.00	4.50	35.00
82	TUCKER	318.0	98.10	5.0	1.50	1.0	0.30	15.50	74.00	4.50	26.00

PAGE: 112

ELEMENTARY SCHOOLS, ALL YEARS - VANDERLYN

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
73	VANDERLYN	631.0	99.40	2.0	0.30	2.0	0.30	24.00	96.00	1.00	4.00
74	VANDERLYN	713.0	99.60	2.0	0.30	1.0	0.10	29.00	97.00	1.00	3.00
75	VANDERLYN	470.0	99.40	2.0	0.40	1.0	0.20	25.00	93.00	2.00	7.00
76	VANDERLYN	537.0	99.30	2.0	0.40	2.0	0.40	22.00	88.00	3.00	12.00
77	VANDERLYN	563.0	99.10	4.0	0.70	1.0	0.20	24.00	86.00	4.00	14.00
78	VANDERLYN	677.0	98.10	9.0	1.30	4.0	0.60	27.00	84.00	5.00	16.00
79	VANDERLYN	658.0	96.50	16.0	2.30	8.0	1.10	28.00	82.00	6.00	18.00
80	VANDERLYN	616.0	96.10	16.0	2.50	9.0	1.40	28.50	83.00	6.00	17.00
81	VANDERLYN	555.0	95.70	16.0	2.80	9.0	1.60	23.00	77.00	7.00	23.00
82	VANDERLYN	497.0	95.60	14.0	2.70	9.0	1.80	21.50	78.00	6.00	22.00
83	VANDERLYN	427.0	93.00	19.0	4.10	13.0	2.90	18.00	75.00	6.00	25.00
84	VANDERLYN	379.0	91.80	17.0	4.10	17.0	4.10	17.50	74.50	6.00	25.50
85	VANDERLYN	518.0	90.90	18.0	3.10	34.0	6.00	23.00	76.70	7.00	23.30
86	VANDERLYN	578.0	90.60	20.0	3.10	40.0	6.30	28.00	82.40	6.00	17.60

PAGE: 113

ELEMENTARY SCHOOLS, ALL YEARS - W D THOMPSON

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	W D THOMPSON	431.0	99.10	4.0	0.90	0.0	0.00	18.00	90.00	2.00	10.00
70	W D THOMPSON	375.0	97.90	6.0	1.60	2.0	0.50	18.00	90.00	2.00	10.00
71	W D THOMPSON	360.0	98.90	3.0	0.80	1.0	0.30	17.00	94.00	1.00	6.00

PAGE: 114

ELEMENTARY SCHOOLS, ALL YEARS - WADSWORTH

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	WADSWORTH	516.0	100.00	0.0	0.00	0.0	0.00	23.00	96.00	1.00	4.00
70	WADSWORTH	472.0	100.00	0.0	0.00	0.0	0.00	28.00	96.60	1.00	3.40
71	WADSWORTH	484.0	99.40	3.0	0.60	0.0	0.00	30.00	91.00	3.00	9.00
72	WADSWORTH	446.0	94.30	27.0	5.70	0.0	0.00	33.00	97.00	1.00	3.00
73	WADSWORTH	329.0	73.00	121.0	26.80	1.0	0.20	27.00	84.00	5.00	16.00
74	WADSWORTH	232.0	48.80	242.0	50.90	1.0	0.20	24.00	92.00	2.00	8.00
75	WADSWORTH	133.0	31.40	287.0	67.80	3.0	0.70	21.00	81.00	5.00	19.00
76	WADSWORTH	85.0	19.00	359.0	80.30	3.0	0.70	20.00	80.00	5.00	20.00
77	WADSWORTH	61.0	12.50	423.0	86.90	3.0	0.60	26.00	84.00	5.00	16.00
78	WADSWORTH	52.0	10.30	450.0	88.90	4.0	0.80	27.00	84.00	5.00	16.00
79	WADSWORTH	23.0	4.80	455.0	94.40	4.0	0.80	24.50	82.00	5.50	18.00
80	WADSWORTH	26.0	5.30	454.0	92.80	9.0	1.80	24.00	77.00	7.00	23.00
81	WADSWORTH	18.0	3.90	434.0	94.60	7.0	1.50	18.00	71.00	7.25	29.00
82	WADSWORTH	14.0	3.20	415.0	93.50	15.0	3.40	17.00	72.00	6.50	28.00
83	WADSWORTH	8.0	2.00	379.0	95.70	9.0	2.30	14.25	66.00	7.50	34.00
84	WADSWORTH	10.0	2.50	378.0	95.40	8.0	2.00	14.00	63.60	8.00	36.40
85	WADSWORTH	10.0	2.40	410.0	96.70	4.0	0.90	15.50	64.60	8.50	35.40
86	WADSWORTH	13.0	3.00	419.0	96.70	1.0	0.20	16.00	70.00	7.00	30.00

PAGE: 115

ELEMENTARY SCHOOLS, ALL YEARS - WARREN

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	WARREN	0.0	0.00	0.0	0.00	0.0	0.00	26.00	100.00	0.00	0.00
71	WARREN	609.0	99.30	0.0	0.00	4.0	0.70	27.00	96.00	1.00	4.00
72	WARREN	532.0	98.20	0.0	0.00	10.0	1.90	25.00	96.00	1.00	4.00
73	WARREN	470.0	97.90	0.0	0.00	10.0	2.10	21.00	91.00	2.00	9.00
74	WARREN	508.0	98.10	0.0	0.00	10.0	2.00	26.00	96.00	1.00	4.00
75	WARREN	439.0	97.30	1.0	0.20	11.0	2.40	25.00	93.00	2.00	7.00
76	WARREN	426.0	97.70	1.0	0.20	9.0	2.10	21.00	88.00	3.00	12.00
77	WARREN	423.0	98.60	1.0	0.20	5.0	1.20	21.00	84.00	4.00	16.00
78	WARREN	387.0	93.90	7.0	1.70	18.0	4.40	21.00	84.00	4.00	16.00
79	WARREN	324.0	92.80	10.0	2.90	15.0	4.30	19.00	83.00	4.00	17.00
80	WARREN	267.0	90.20	15.0	5.10	14.0	4.70	18.00	78.00	5.00	22.00
81	WARREN	231.0	87.20	21.0	7.90	13.0	4.90	12.50	71.00	5.00	29.00
82	WARREN	207.0	86.60	21.0	8.80	11.0	4.60	13.12	77.00	4.00	23.00

PAGE: 116

ELEMENTARY SCHOOLS, ALL YEARS - WESLEY CHAPEL

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	WESLEY CHAPEL	622.0	99.40	4.0	0.60	0.0	0.00	23.00	92.00	2.00	8.00
70	WESLEY CHAPEL	344.0	100.00	0.0	0.00	0.0	0.00	16.00	88.90	2.00	11.10
71	WESLEY CHAPEL	492.0	99.80	0.0	0.00	1.0	0.20	21.00	91.00	2.00	9.00
72	WESLEY CHAPEL	669.0	99.70	0.0	0.00	2.0	0.30	28.00	93.00	2.00	7.00
73	WESLEY CHAPEL	829.0	99.80	0.0	0.00	2.0	0.20	31.00	94.00	2.00	6.00
74	WESLEY CHAPEL	755.0	99.50	4.0	0.50	0.0	0.00	29.00	91.00	3.00	9.00

ELEMENTARY SCHOOLS, ALL YEARS - WOODRIDGE

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
75	WOODRIDGE	449.0	99.20	0.0	0.00	4.0	0.80	23.00	88.00	3.00	12.00
76	WOODRIDGE	559.0	98.20	4.0	0.70	6.0	1.10	22.00	88.00	3.00	12.00
77	WOODRIDGE	642.0	98.00	4.0	0.60	9.0	1.40	25.00	83.00	5.00	17.00
78	WOODRIDGE	737.0	95.50	11.0	1.40	24.0	3.10	30.00	83.00	6.00	17.00
79	WOODRIDGE	805.0	95.40	16.0	1.90	23.0	2.70	32.00	83.00	6.50	17.00
80	WOODRIDGE	790.0	93.50	22.0	2.60	33.0	3.90	33.00	83.00	7.00	17.00
81	WOODRIDGE	807.0	91.20	33.0	3.70	45.0	5.10	33.00	79.00	9.00	21.00
82	WOODRIDGE	683.0	89.80	33.0	4.30	45.0	5.90	28.00	74.00	10.00	26.00
83	WOODRIDGE	590.0	85.60	53.0	7.70	46.0	6.70	23.50	71.00	9.50	29.00
84	WOODRIDGE	554.0	79.80	87.0	12.50	53.0	7.60	26.00	75.40	8.50	24.60
85	WOODRIDGE	527.0	73.80	135.0	18.90	52.0	7.30	26.25	73.40	9.50	26.60
86	WOODRIDGE	508.0	68.00	170.0	22.70	69.0	9.20	29.00	76.00	9.00	24.00

ELEMENTARY SCHOOLS, ALL YEARS - WOODWARD

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	WOODWARD	699.0	99.90	1.0	0.10	0.0	0.00	26.00	96.00	1.00	4.00
70	WOODWARD	643.0	100.00	0.0	0.00	0.0	0.00	28.00	96.60	1.00	3.40
71	WOODWARD	584.0	100.00	0.0	0.00	0.0	0.00	25.00	93.00	2.00	7.00
72	WOODWARD	557.0	98.60	0.0	0.00	7.0	1.20	24.00	92.00	2.00	8.00
73	WOODWARD	554.0	97.50	1.0	0.20	13.0	2.30	21.00	91.00	2.00	9.00
74	WOODWARD	595.0	95.70	1.0	0.20	26.0	4.20	28.00	93.00	2.00	7.00
75	WOODWARD	583.0	87.30	34.0	5.20	51.0	7.50	28.00	90.00	3.00	10.00
76	WOODWARD	551.0	82.20	47.0	7.00	72.0	10.70	27.00	90.00	3.00	10.00
77	WOODWARD	498.0	79.20	46.0	7.30	85.0	13.50	27.00	87.00	4.00	13.00
78	WOODWARD	397.0	73.50	50.0	9.30	93.0	17.20	23.00	82.00	5.00	18.00
79	WOODWARD	331.0	66.10	58.0	11.60	112.0	22.40	22.50	82.00	5.00	18.00
80	WOODWARD	289.0	66.30	51.0	11.70	96.0	22.00	22.50	82.00	5.00	18.00
81	WOODWARD	276.0	61.10	69.0	15.30	107.0	23.60	17.50	74.00	6.25	26.00
82	WOODWARD	248.0	55.70	87.0	19.60	110.0	24.70	18.50	75.00	6.25	25.00
83	WOODWARD	207.0	53.50	71.0	18.30	109.0	28.20	17.75	70.00	7.50	30.00
84	WOODWARD	234.0	48.00	114.0	23.40	140.0	28.70	19.50	75.00	6.50	25.00
85	WOODWARD	215.0	40.10	157.0	29.30	164.0	30.60	20.25	73.00	7.50	27.00
86	WOODWARD	186.0	32.30	183.0	31.80	207.0	35.90	21.00	70.00	9.00	30.00

HIGH SCHOOLS, ALL YEARS - BRIARCLIFF

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	BRIARCLIFF	1,746.0	99.10	7.0	0.40	8.0	0.50	70.00	93.00	4.00	7.00
70	BRIARCLIFF	1,605.0	99.10	6.0	0.40	8.0	0.50	68.00	94.00	4.00	6.00
71	BRIARCLIFF	1,555.0	99.10	4.0	0.30	10.0	0.60	66.00	96.00	3.00	4.00
72	BRIARCLIFF	1,550.0	99.00	2.0	0.10	13.0	0.80	69.00	97.00	2.00	3.00
73	BRIARCLIFF	1,463.0	98.30	3.0	0.20	23.0	1.60	68.00	97.00	2.00	3.00
74	BRIARCLIFF	1,336.0	97.20	3.0	0.20	35.0	2.60	62.00	98.00	1.00	2.00
75	BRIARCLIFF	1,221.0	97.00	2.0	0.20	36.0	2.80	52.00	93.00	4.00	7.00
76	BRIARCLIFF	1,143.0	96.50	3.0	0.30	39.0	3.30	54.00	89.00	7.00	11.00
77	BRIARCLIFF	1,039.0	96.20	5.0	0.50	36.0	3.30	46.00	85.00	8.00	15.00
78	BRIARCLIFF	936.0	93.90	18.0	1.80	43.0	4.30	46.00	84.00	9.00	16.00
79	BRIARCLIFF	785.0	91.30	31.0	3.60	44.0	5.10	48.00	84.00	9.00	16.00
80	BRIARCLIFF	699.0	82.10	90.0	10.60	62.0	7.30	50.00	82.00	11.00	18.00
81	BRIARCLIFF	616.0	76.10	123.0	15.20	70.0	8.60	33.50	80.00	8.50	20.00
82	BRIARCLIFF	560.0	62.40	246.0	27.40	91.0	10.10	33.00	76.00	10.50	24.00
83	BRIARCLIFF	444.0	50.90	362.0	41.50	67.0	7.60	34.50	80.00	8.50	20.00
84	BRIARCLIFF	421.0	46.90	383.0	42.70	93.0	10.40	32.00	74.00	11.00	26.00
85	BRIARCLIFF	356.0	46.80	360.0	47.40	44.0	5.80	31.50	72.00	12.50	28.00
	BRIARCLIFF	213.0	43.50	254.0	51.80	23.0	4.70	28.00	75.00	9.50	25.00

HIGH SCHOOLS, ALL YEARS - CEDAR GROVE

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
72	CEDAR GROVE	428.0	87.70	59.0	12.10	1.0	0.20	24.00	96.00	1.00	4.00
73	CEDAR GROVE	605.0	85.20	103.0	14.50	2.0	0.20	24.00	92.00	2.00	0.80
74	CEDAR GROVE	709.0	86.30	111.0	13.50	2.0	0.20	38.00	93.00	3.00	7.00
75	CEDAR GROVE	736.0	84.70	126.0	14.50	7.0	0.80	40.00	91.00	4.00	9.00
76	CEDAR GROVE	771.0	78.80	201.0	20.50	7.0	0.70	45.00	83.00	9.00	17.00
77	CEDAR GROVE	702.0	67.20	329.0	31.50	14.0	1.40	43.00	84.00	9.00	16.00
78	CEDAR GROVE	557.0	51.00	526.0	48.20	9.0	0.90	45.00	80.00	11.00	20.00
79	CEDAR GROVE	385.0	38.70	606.0	60.90	4.0	0.40	39.00	80.00	10.00	20.00
80	CEDAR GROVE	265.0	29.20	641.0	70.60	2.0	0.20	40.00	82.00	9.00	18.00
81	CEDAR GROVE	201.0	23.10	685.0	76.50	3.0	0.30	33.50	76.00	10.50	24.00
82	CEDAR GROVE	185.0	22.00	652.0	77.50	4.0	0.50	31.00	73.00	11.50	27.00
83	CEDAR GROVE	144.0	17.60	665.0	82.00	2.0	0.20	31.00	74.00	11.00	26.00
84	CEDAR GROVE	86.0	10.90	700.0	88.60	4.0	0.50	31.00	75.00	10.50	25.00
85	CEDAR GROVE	68.0	8.50	731.0	91.30	2.0	0.20	29.00	68.00	13.50	32.00
86	CEDAR GROVE	62.0	7.80	729.0	91.70	4.0	0.50	32.50	71.00	13.00	29.00

HIGH SCHOOLS, ALL YEARS - CHAMBLEE

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	CHAMBLEE	1,719.0	96.70	59.0	3.30	0.0	0.00	87.00	97.00	3.00	3.00
70	CHAMBLEE	1,764.0	96.40	61.0	3.30	4.0	0.30	80.00	96.00	3.00	4.00
71	CHAMBLEE	1,718.0	96.10	66.0	3.70	3.0	0.20	82.00	96.00	3.00	4.00
72	CHAMBLEE	1,718.0	96.20	64.0	3.60	4.0	0.30	81.00	95.00	4.00	5.00
73	CHAMBLEE	1,696.0	96.10	62.0	3.50	7.0	0.40	76.00	93.00	6.00	7.00
74	CHAMBLEE	1,630.0	96.60	51.0	3.00	7.0	0.50	74.00	96.00	3.00	4.00
75	CHAMBLEE	1,618.0	95.30	76.0	4.50	4.0	0.20	68.00	88.00	9.00	12.00
76	CHAMBLEE	1,532.0	94.70	76.0	4.70	10.0	0.60	61.00	85.00	11.00	15.00
77	CHAMBLEE	1,491.0	94.20	74.0	4.70	17.0	1.10	61.00	84.00	12.00	16.00
78	CHAMBLEE	1,349.0	92.70	92.0	6.30	15.0	1.10	59.00	86.00	10.00	14.00
79	CHAMBLEE	1,269.0	92.30	90.0	6.50	16.0	1.20	55.00	85.00	10.00	15.00
80	CHAMBLEE	1,160.0	91.60	91.0	7.20	16.0	1.20	52.00	83.00	11.00	17.00
81	CHAMBLEE	1,096.0	88.90	104.0	8.40	33.0	2.70	46.50	79.00	12.50	21.00
82	CHAMBLEE	1,052.0	88.20	120.0	10.10	21.0	1.70	47.00	78.00	13.00	22.00
83	CHAMBLEE	975.0	87.40	124.0	11.10	16.0	1.50	43.00	80.00	11.00	20.00
84	CHAMBLEE	949.0	85.00	140.0	12.50	28.0	2.50	40.00	74.00	14.00	26.00
85	CHAMBLEE	851.0	82.90	142.0	13.80	33.0	3.20	41.00	79.00	11.00	21.00
86	CHAMBLEE	764.0	78.30	169.0	17.30	43.0	4.40	37.50	76.00	12.00	24.00

HIGH SCHOOLS, ALL YEARS - CLARKSTON

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	CLARKSTON	1,367.0	87.10	202.0	12.90	1.0	0.10	64.00	89.00	8.00	11.00
70	CLARKSTON	1,454.0	87.80	200.0	12.10	2.0	0.20	68.00	92.00	6.00	8.00
71	CLARKSTON	1,673.0	89.60	193.0	10.30	2.0	0.10	78.00	95.00	4.00	5.00
72	CLARKSTON	1,768.0	90.30	184.0	9.40	5.0	0.30	98.00	98.00	2.00	2.00
73	CLARKSTON	1,892.0	91.60	165.0	8.00	9.0	0.40	87.00	94.00	6.00	6.00
74	CLARKSTON	2,019.0	93.90	124.0	5.80	8.0	0.40	93.00	97.00	3.00	3.00
75	CLARKSTON	1,944.0	94.80	98.0	4.80	9.0	0.20	87.00	92.00	8.00	8.00
76	CLARKSTON	1,661.0	94.70	86.0	4.90	7.0	0.50	68.00	87.00	10.00	13.00
77	CLARKSTON	1,458.0	93.70	75.0	4.80	23.0	1.60	61.00	85.00	11.00	15.00
78	CLARKSTON	1,383.0	92.10	93.0	6.20	26.0	1.70	61.00	84.00	12.00	16.00
79	CLARKSTON	1,332.0	89.50	115.0	7.70	41.0	2.70	60.00	83.00	12.00	17.00
80	CLARKSTON	1,306.0	89.50	109.0	7.50	44.0	3.00	63.00	82.00	14.00	18.00
81	CLARKSTON	1,211.0	86.70	142.0	10.20	44.0	3.10	54.50	80.00	14.00	20.00
82	CLARKSTON	1,197.0	84.50	165.0	11.60	55.0	3.90	54.50	78.00	15.00	22.00
83	CLARKSTON	1,182.0	82.90	173.0	12.10	70.0	4.90	53.00	77.00	16.00	23.00
84	CLARKSTON	1,125.0	76.80	239.0	16.30	100.0	6.80	54.00	76.00	17.00	24.00
85	CLARKSTON	1,043.0	72.20	298.0	20.60	103.0	7.10	52.00	73.00	19.00	27.00
86	CLARKSTON	940.0	67.10	349.0	25.00	111.0	7.90	51.50	74.00	18.00	26.00

HIGH SCHOOLS, ALL YEARS - COLUMBIA

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	COLUMBIA	2,179.0	99.40	7.0	0.30	7.0	0.30	90.00	95.00	5.00	5.00
70	COLUMBIA	2,207.0	98.30	34.0	1.50	5.0	0.20	94.00	96.00	3.00	4.00
71	COLUMBIA	2,220.0	96.70	69.0	3.00	7.0	0.30	94.00	96.00	4.00	4.00
72	COLUMBIA	1,918.0	90.20	198.0	9.30	11.0	0.50	89.00	90.00	8.00	10.00
73	COLUMBIA	1,461.0	78.50	390.0	21.00	9.0	0.50	85.00	89.00	10.00	11.00
74	COLUMBIA	1,138.0	64.10	626.0	35.20	12.0	0.70	63.00	76.00	20.00	24.00
75	COLUMBIA	868.0	49.60	869.0	49.60	14.0	0.80	64.00	79.00	17.00	21.00
76	COLUMBIA	647.0	36.70	1,105.0	62.70	11.0	0.60	66.00	80.00	16.00	20.00
77	COLUMBIA	422.0	23.10	1,395.0	76.40	9.0	0.50	71.00	83.00	15.00	17.00
78	COLUMBIA	198.0	11.40	1,529.0	87.80	14.0	0.90	65.00	76.00	20.00	24.00
79	COLUMBIA	99.0	5.60	1,649.0	93.80	9.0	0.50	65.00	81.00	17.00	19.00
80	COLUMBIA	70.0	4.00	1,680.0	95.50	9.0	0.50	68.00	79.00	18.00	21.00
81	COLUMBIA	64.0	3.70	1,676.0	95.80	9.0	0.50	62.50	73.00	23.00	27.00
82	COLUMBIA	44.0	2.50	1,694.0	96.90	10.0	0.70	62.00	71.00	25.50	29.00
83	COLUMBIA	40.0	2.20	1,728.0	97.10	11.0	0.70	64.00	73.00	23.50	27.00
84	COLUMBIA	32.0	1.90	1,651.0	96.90	21.0	1.20	60.50	70.00	25.50	30.00
85	COLUMBIA	11.0	0.70	1,572.0	98.10	19.0	1.20	54.50	65.00	28.50	35.00
86	COLUMBIA	10.0	0.70	1,462.0	98.40	14.0	0.90	50.00	65.00	27.00	35.00

HIGH SCHOOLS, ALL YEARS - CROSS KEYS

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	CROSS KEYS	1,920.0	93.50	130.0	6.30	3.0	0.10	91.00	96.00	5.00	4.00
70	CROSS KEYS	1,738.0	94.30	103.0	5.60	3.0	0.20	84.00	93.00	6.00	7.00
71	CROSS KEYS	1,720.0	93.70	114.0	6.20	2.0	0.10	80.00	95.00	4.00	5.00
72	CROSS KEYS	1,545.0	92.80	108.0	6.50	12.0	0.70	75.00	96.00	3.00	4.00
73	CROSS KEYS	1,386.0	92.00	99.0	6.60	21.0	1.40	64.00	88.00	9.00	12.00
74	CROSS KEYS	1,379.0	90.00	113.0	7.40	40.0	2.60	69.00	95.00	4.00	5.00
75	CROSS KEYS	1,247.0	89.30	99.0	7.10	51.0	3.70	63.00	90.00	7.00	10.00
76	CROSS KEYS	1,247.0	89.60	78.0	5.60	67.0	4.90	58.00	85.00	10.00	15.00
77	CROSS KEYS	1,272.0	89.70	68.0	4.80	78.0	5.50	59.00	84.00	11.00	16.00
78	CROSS KEYS	1,205.0	89.80	53.0	3.90	84.0	6.10	53.00	83.00	11.00	17.00
79	CROSS KEYS	1,066.0	87.20	65.0	5.30	91.0	7.40	46.00	81.00	11.00	19.00
80	CROSS KEYS	995.0	86.30	62.0	5.40	96.0	8.30	50.00	81.00	12.00	19.00
81	CROSS KEYS	882.0	83.70	73.0	6.90	99.0	9.40	41.50	80.00	11.00	20.00
82	CROSS KEYS	793.0	80.30	84.0	8.50	110.0	11.20	37.50	75.00	12.50	25.00
83	CROSS KEYS	794.0	77.20	108.0	10.50	126.0	12.30	39.00	76.00	12.50	24.00
84	CROSS KEYS	762.0	72.30	161.0	15.30	131.0	12.40	39.50	73.00	14.25	27.00
85	CROSS KEYS	637.0	59.40	219.0	20.40	217.0	20.20	37.00	72.00	14.25	28.00
86	CROSS KEYS	531.0	51.80	273.0	26.70	220.0	21.50	37.50	73.00	14.00	27.00

HIGH SCHOOLS, ALL YEARS - DRUID HILLS

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	DRUID HILLS	1,170.0	94.60	66.0	5.30	1.0	0.10	58.00	97.00	2.00	3.00
70	DRUID HILLS	1,150.0	94.30	66.0	5.40	4.0	0.40	56.00	97.00	2.00	3.00
71	DRUID HILLS	1,091.0	93.50	72.0	6.20	4.0	0.30	55.00	96.00	2.00	4.00
72	DRUID HILLS	1,029.0	94.90	50.0	4.60	5.0	0.50	53.00	96.00	2.00	4.00
73	DRUID HILLS	972.0	94.50	48.0	4.70	9.0	0.90	48.00	91.00	5.00	9.00
74	DRUID HILLS	949.0	91.30	82.0	7.90	8.0	0.80	49.00	96.00	2.00	4.00
75	DRUID HILLS	911.0	90.60	80.0	8.00	14.0	1.40	48.00	94.00	3.00	6.00
76	DRUID HILLS	993.0	88.70	99.0	9.40	20.0	1.90	44.00	86.00	7.00	14.00
77	DRUID HILLS	834.0	84.50	128.0	13.00	25.0	2.50	43.00	86.00	7.00	14.00
78	DRUID HILLS	771.0	83.50	128.0	13.90	24.0	2.60	36.00	84.00	7.00	16.00
79	DRUID HILLS	704.0	80.10	151.0	17.20	24.0	2.70	41.00	82.00	9.00	18.00
80	DRUID HILLS	652.0	71.70	232.0	25.60	25.0	2.70	46.00	82.00	10.00	18.00
81	DRUID HILLS	613.0	59.10	394.0	38.00	31.0	3.00	41.00	80.00	10.50	20.00
82	DRUID HILLS	620.0	59.30	396.0	37.90	30.0	2.70	39.00	76.00	12.00	24.00
83	DRUID HILLS	617.0	53.60	508.0	44.10	26.0	2.20	42.00	74.00	14.50	26.00
84	DRUID HILLS	595.0	49.30	590.0	48.80	23.0	1.90	43.50	74.00	15.50	26.00
85	DRUID HILLS	521.0	48.10	539.0	49.80	23.0	2.10	41.50	76.00	13.00	24.00
86	DRUID HILLS	497.0	53.00	413.0	44.00	28.0	2.90	36.50	74.00	12.50	26.00

HIGH SCHOOLS, ALL YEARS - DUNWOODY

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
72	DUNWOODY	908.0	99.90	0.0	0.00	1.0	0.10	41.00	100.00	0.00	0.00
73	DUNWOODY	1,400.0	99.70	0.0	0.00	4.0	0.30	58.00	91.00	6.00	9.00
74	DUNWOODY	1,749.0	99.50	0.0	0.00	8.0	0.50	77.00	96.00	3.00	4.00
75	DUNWOODY	1,799.0	99.60	0.0	0.00	7.0	0.40	77.00	92.00	7.00	8.00
76	DUNWOODY	1,841.0	99.60	1.0	0.10	7.0	0.40	76.00	89.00	9.00	11.00
77	DUNWOODY	1,905.0	99.40	2.0	0.10	9.0	0.50	74.00	85.00	13.00	15.00
78	DUNWOODY	2,017.0	99.40	4.0	0.20	8.0	0.30	79.00	84.00	15.00	16.00
79	DUNWOODY	2,013.0	99.60	4.0	0.20	4.0	0.20	78.00	83.00	16.00	17.00
80	DUNWOODY	1,958.0	98.90	10.0	0.50	11.0	0.70	78.00	81.00	18.00	19.00
81	DUNWOODY	1,927.0	98.90	6.0	0.30	16.0	0.80	72.00	76.00	20.50	24.00
82	DUNWOODY	1,847.0	98.60	9.0	0.50	17.0	1.00	69.00	77.00	20.50	23.00
83	DUNWOODY	1,760.0	98.10	11.0	0.60	23.0	1.30	66.00	77.00	19.50	23.00
84	DUNWOODY	1,759.0	97.30	15.0	0.80	33.0	1.80	65.00	75.00	21.50	25.00
85	DUNWOODY	1,687.0	96.30	23.0	1.30	42.0	2.40	63.00	75.00	21.50	25.00
86	DUNWOODY	1,497.0	94.60	38.0	2.40	47.0	2.[illegible]	59.50	76.00	19.00	24.00

HIGH SCHOOLS, ALL YEARS - GORDON

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	GORDON	1,291.0	83.40	255.0	16.50	2.0	0.20	70.00	96.00	3.00	4.00
70	GORDON	1,116.0	71.20	450.0	28.70	2.0	0.20	69.00	92.00	5.00	8.00
71	GORDON	856.0	54.10	725.0	45.80	2.0	0.10	63.00	84.00	12.00	16.00
72	GORDON	369.0	27.00	996.0	72.90	1.0	0.10	59.00	76.00	19.00	24.00
73	GORDON	171.0	11.40	1,334.0	88.60	0.0	0.00	55.00	74.00	19.00	26.00
74	GORDON	38.0	2.60	1,438.0	97.40	0.0	0.00	35.00	46.00	41.00	54.00
75	GORDON	19.0	1.30	1,489.0	98.70	1.0	0.10	38.00	52.00	35.00	48.00
76	GORDON	9.0	0.60	1,574.0	99.40	1.0	0.10	37.00	~~52.60~~ 53.6	~~3.00~~ 33.0	~~2.50~~ 46.4
77	GORDON	10.0	0.60	1,584.0	99.30	1.0	0.10	46.00	64.00	26.00	36.00
78	GORDON	7.0	0.50	1,467.0	99.50	1.0	0.10	43.00	61.00	27.00	39.00
79	GORDON	6.0	0.40	1,406.0	99.50	1.0	0.10	46.00	67.00	23.00	33.00
80	GORDON	8.0	0.60	1,275.0	99.40	0.0	0.00	52.00	70.00	22.00	30.00
81	GORDON	4.0	0.30	1,226.0	99.60	1.0	0.10	42.00	66.00	21.50	34.00
82	GORDON	2.0	0.20	1,170.0	99.70	1.0	0.10	39.00	63.00	22.50	37.00
83	GORDON	4.0	0.40	1,068.0	99.50	1.0	0.10	35.00	61.00	22.00	39.00
84	GORDON	4.0	0.40	1,011.0	99.40	2.0	0.20	31.00	61.00	19.75	39.00
85	GORDON	3.0	0.30	915.0	99.60	1.0	0.10	31.50	61.00	20.25	39.00
86	GORDON	3.0	0.30	831.0	99.50	1.0	0.10	36.50	65.00	20.00	35.00

HIGH SCHOOLS, ALL YEARS - HENDERSON

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	HENDERSON	1,830.0	99.80	1.0	0.10	2.0	0.10	75.00	96.00	3.00	4.00
70	HENDERSON	2,093.0	99.90	2.0	0.10	1.0	0.10	86.00	97.00	3.00	3.00
71	HENDERSON	2,180.0	99.90	1.0	0.10	1.0	0.10	91.00	97.00	3.00	3.00
72	HENDERSON	2,236.0	99.80	1.0	0.10	3.0	0.10	101.00	98.00	2.00	2.00
73	HENDERSON	2,172.0	99.60	0.0	0.00	9.0	0.40	97.00	96.00	4.00	4.00
74	HENDERSON	2,063.0	99.50	0.0	0.00	11.0	0.50	95.00	99.00	1.00	1.00
75	HENDERSON	1,963.0	99.50	0.0	0.00	10.0	0.50	84.00	93.00	6.00	7.00
76	HENDERSON	1,933.0	99.30	1.0	0.10	13.0	0.80	78.00	90.00	9.00	10.00
77	HENDERSON	1,874.0	99.30	0.0	0.00	14.0	0.70	71.00	86.00	12.00	14.00
78	HENDERSON	1,883.0	98.80	3.0	0.20	20.0	1.10	73.00	85.00	13.00	15.00
79	HENDERSON	1,763.0	98.10	2.0	0.10	32.0	1.80	68.00	82.00	15.00	18.00
80	HENDERSON	1,615.0	97.30	12.0	0.70	33.0	2.10	66.00	81.00	15.00	19.00
81	HENDERSON	1,434.0	96.80	12.0	0.80	36.0	2.40	55.50	79.00	15.00	21.00
82	HENDERSON	1,341.0	95.20	30.0	2.10	37.0	2.70	53.50	79.00	14.00	21.00
83	HENDERSON	1,289.0	91.50	72.0	5.10	48.0	3.40	53.00	77.00	16.00	23.00
84	HENDERSON	1,196.0	86.10	127.0	9.10	66.0	4.80	52.00	78.00	14.50	22.00
85	HENDERSON	1,130.0	79.10	217.0	15.20	81.0	5.70	51.00	74.00	18.00	26.00
86	HENDERSON	1,020.0	64.80	448.0	28.40	107.0	6.80	55.00	72.00	21.00	28.00

HIGH SCHOOLS, ALL YEARS - LAKESIDE

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	LAKESIDE	1,997.0	99.20	15.0	0.70	1.0	0.10	83.33	94.00	5.00	6.00
70	LAKESIDE	1,980.0	99.00	17.0	0.90	1.0	0.10	84.00	98.00	2.00	2.00
71	LAKESIDE	1,994.0	99.20	13.0	0.60	3.0	0.10	84.00	98.00	2.00	2.00
72	LAKESIDE	1,900.0	99.20	13.0	0.70	3.0	0.20	85.00	97.00	3.00	3.00
73	LAKESIDE	1,953.0	99.20	12.0	0.60	4.0	0.20	83.00	95.00	4.00	5.00
74	LAKESIDE	2,008.0	98.70	16.0	0.80	7.0	0.30	90.00	98.00	2.00	2.00
75	LAKESIDE	1,991.0	98.80	15.0	0.70	9.0	0.40	87.00	95.00	5.00	5.00
76	LAKESIDE	1,932.0	98.30	16.0	0.80	17.0	1.00	80.00	91.00	8.00	9.00
77	LAKESIDE	1,934.0	98.10	18.0	0.90	19.0	1.10	76.00	85.00	13.00	15.00
78	LAKESIDE	1,763.0	97.30	23.0	1.30	25.0	1.40	70.00	84.00	13.00	16.00
79	LAKESIDE	1,579.0	96.60	30.0	1.80	26.0	1.60	63.00	83.00	13.00	17.00
80	LAKESIDE	1,419.0	93.40	66.0	4.30	34.0	2.30	60.00	81.00	14.00	19.00
81	LAKESIDE	1,281.0	89.50	103.0	7.20	47.0	3.20	56.00	81.00	13.00	19.00
82	LAKESIDE	1,157.0	79.60	247.0	17.00	49.0	3.40	54.00	77.00	16.00	23.00
83	LAKESIDE	1,038.0	68.30	427.0	28.10	54.0	3.60	57.50	75.00	19.50	25.00
84	LAKESIDE	905.0	59.90	547.0	36.20	59.0	3.90	56.00	74.00	20.00	26.00
85	LAKESIDE	850.0	56.10	611.0	40.30	55.0	3.60	55.50	74.00	19.50	26.00
86	LAKESIDE	788.0	53.20	638.0	43.10	54.0	3.60	55.50	74.00	20.00	26.00

HIGH SCHOOLS, ALL YEARS - LITHONIA

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	LITHONIA	580.0	65.00	312.0	35.00	0.0	0.00	44.00	86.00	7.00	14.00
70	LITHONIA	600.0	67.90	284.0	32.10	0.0	0.00	42.00	91.00	6.00	9.00
71	LITHONIA	639.0	69.70	278.0	30.30	0.0	0.00	46.00	85.00	8.00	15.00
72	LITHONIA	676.0	71.50	270.0	28.50	0.0	0.00	42.00	82.00	9.00	18.00
73	LITHONIA	692.0	71.70	273.0	28.30	0.0	0.00	42.00	82.00	9.00	18.00
74	LITHONIA	994.0	78.10	277.0	21.80	2.0	0.20	54.00	86.00	9.00	14.00
75	LITHONIA	1,104.0	78.10	304.0	21.50	6.0	0.40	60.00	86.00	10.00	14.00
76	LITHONIA	920.0	74.40	311.0	25.20	5.0	0.40	56.00	86.00	9.00	14.00
77	LITHONIA	918.0	75.60	293.0	24.10	3.0	0.30	51.00	84.00	10.00	16.00
78	LITHONIA	937.0	75.60	300.0	24.20	2.0	0.20	51.00	81.00	12.00	19.00
79	LITHONIA	946.0	75.00	311.0	24.60	5.0	0.40	53.00	83.00	11.00	17.00
80	LITHONIA	945.0	74.00	325.0	25.50	7.0	0.60	53.00	80.00	13.00	20.00
81	LITHONIA	938.0	74.00	316.0	24.90	14.0	1.20	49.00	77.00	15.00	23.00
82	LITHONIA	931.0	67.50	431.0	31.30	17.0	1.30	54.00	78.00	15.50	22.00
83	LITHONIA	962.0	67.70	443.0	31.20	16.0	1.20	53.50	76.00	17.00	24.00
84	LITHONIA	995.0	64.90	528.0	34.40	11.0	0.70	55.00	73.00	20.25	27.00
85	LITHONIA	914.0	60.80	567.0	37.70	22.0	1.50	54.00	71.00	22.25	29.00
86	LITHONIA	874.0	57.50	625.0	41.00	22.0	1.40	53.50	71.00	22.00	29.00

PAGE: 15

HIGH SCHOOLS, ALL YEARS - PEACHTREE

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	PEACHTREE	1,437.0	99.50	4.0	0.30	3.0	0.20	61.00	95.00	3.00	5.00
70	PEACHTREE	2,144.0	99.50	9.0	0.40	2.0	0.10	87.00	99.00	1.00	1.00
71	PEACHTREE	2,573.0	99.40	14.0	0.50	1.0	0.10	113.00	99.00	1.00	1.00
72	PEACHTREE	2,019.0	99.70	6.0	0.30	1.0	0.00	91.00	100.00	0.00	0.00
73	PEACHTREE	1,880.0	99.80	1.0	0.10	1.0	0.10	88.00	97.00	3.00	3.00
74	PEACHTREE	1,799.0	99.30	7.0	0.40	6.0	0.30	76.00	99.00	1.00	1.00
75	PEACHTREE	1,788.0	99.40	8.0	0.40	3.0	0.20	78.00	95.00	4.00	5.00
76	PEACHTREE	1,797.0	99.00	10.0	0.60	8.0	0.40	71.00	89.00	9.00	11.00
77	PEACHTREE	1,869.0	99.10	7.0	0.40	10.0	0.60	72.00	86.00	12.00	14.00
78	PEACHTREE	1,816.0	98.30	17.0	0.90	15.0	0.80	71.00	85.00	13.00	15.00
79	PEACHTREE	1,762.0	97.60	23.0	1.20	21.0	1.20	68.00	82.00	15.00	18.00
80	PEACHTREE	1,610.0	96.50	33.0	2.00	26.0	1.60	66.00	81.00	15.00	19.00
81	PEACHTREE	1,557.0	96.00	36.0	2.20	29.0	1.80	60.50	78.00	17.00	22.00
82	PEACHTREE	1,475.0	95.50	38.0	2.50	32.0	2.10	57.00	77.00	17.00	23.00
83	PEACHTREE	1,351.0	94.00	45.0	3.10	41.0	2.90	54.00	79.00	14.50	21.00
84	PEACHTREE	1,316.0	91.80	69.0	4.80	49.0	3.40	51.50	75.00	17.00	25.00
85	PEACHTREE	1,192.0	88.10	112.0	8.30	49.0	3.60	52.00	79.00	14.00	21.00
86	PEACHTREE	1,046.0	83.70	148.0	11.80	55.0	4.40	49.00	77.20	14.50	22.80

PAGE: 16

HIGH SCHOOLS, ALL YEARS - REDAN

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
76	REDAN	870.0	96.50	25.0	2.80	7.0	0.80	37.00	90.00	4.00	10.00
77	REDAN	1,281.0	94.70	59.0	4.40	12.0	0.90	52.00	85.00	9.00	15.00
78	REDAN	1,665.0	93.70	94.0	5.30	18.0	1.00	68.00	84.00	13.00	16.00
79	REDAN	1,780.0	86.60	246.0	12.00	30.0	1.40	76.00	81.00	18.00	29.00
80	REDAN	1,777.0	85.40	270.0	13.00	35.0	1.60	78.00	80.00	19.00	20.00
81	REDAN	1,711.0	83.90	283.0	13.90	46.0	2.20	76.00	78.00	21.00	22.00
82	REDAN	1,723.0	82.00	319.0	15.20	60.0	2.90	78.00	76.00	24.50	24.00
83	REDAN	1,871.0	81.20	368.0	16.00	66.0	2.80	83.50	75.00	27.50	25.00
84	REDAN	1,884.0	79.60	406.0	17.10	78.0	3.30	88.50	78.00	24.50	22.00
85	REDAN	1,799.0	73.40	547.0	22.30	104.0	4.20	91.00	77.00	26.50	23.00
86	REDAN	1,081.0	68.40	442.0	27.90	57.0	3.60	102.00	76.00	33.00	24.00

HIGH SCHOOLS, ALL YEARS - SEQUOYAH

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	SEQUOYAH	1,799.0	99.40	7.0	0.40	3.0	0.20	76.00	96.00	3.00	4.00
70	SEQUOYAH	1,722.0	99.60	0.0	0.00	7.0	0.40	78.00	98.00	2.00	2.00
71	SEQUOYAH	1,680.0	99.60	0.0	0.00	6.0	0.40	75.00	97.00	2.00	3.00
72	SEQUOYAH	1,662.0	99.30	3.0	0.20	9.0	0.50	79.00	99.00	1.00	1.00
73	SEQUOYAH	1,713.0	99.20	4.0	0.20	9.0	0.50	75.00	97.00	2.00	3.00
74	SEQUOYAH	1,724.0	98.90	3.0	0.20	17.0	1.00	80.00	98.00	2.00	2.00
75	SEQUOYAH	1,570.0	98.30	3.0	0.20	24.0	1.50	75.00	95.00	4.00	5.00
76	SEQUOYAH	1,535.0	97.90	8.0	0.50	25.0	1.80	65.00	87.00	10.00	13.00
77	SEQUOYAH	1,487.0	96.20	21.0	1.40	37.0	2.30	64.00	84.00	12.00	16.00
78	SEQUOYAH	1,377.0	96.30	9.0	0.60	44.0	3.00	61.00	86.00	10.00	14.00
79	SEQUOYAH	1,220.0	94.40	22.0	1.70	51.0	3.90	54.00	83.00	11.00	17.00
80	SEQUOYAH	1,043.0	90.30	37.0	3.20	75.0	6.50	49.00	82.00	11.00	18.00
81	SEQUOYAH	976.0	88.60	42.0	3.80	83.0	7.60	44.00	81.00	10.50	19.00
82	SEQUOYAH	907.0	87.00	46.0	4.40	90.0	8.70	41.50	81.00	10.00	19.00
83	SEQUOYAH	842.0	83.00	84.0	8.30	88.0	8.70	39.00	77.00	11.50	23.00
84	SEQUOYAH	869.0	77.50	132.0	11.80	120.0	10.70	42.00	76.00	13.50	24.00
85	SEQUOYAH	795.0	74.20	159.0	14.80	118.0	11.00	39.50	74.00	14.00	26.00
86	SEQUOYAH	674.0	63.00	238.0	22.20	157.0	14.80	40.50	74.00	14.00	26.00

HIGH SCHOOLS, ALL YEARS - SHAMROCK

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	SHAMROCK	1,300.0	98.40	18.0	1.40	3.0	0.20	55.00	95.00	3.00	5.00
70	SHAMROCK	1,400.0	97.90	25.0	1.70	5.0	0.30	59.00	95.00	3.00	5.00
71	SHAMROCK	1,581.0	98.00	26.0	1.60	7.0	0.40	67.00	96.00	3.00	4.00
72	SHAMROCK	1,635.0	98.10	23.0	1.40	8.0	0.50	73.00	96.00	3.00	4.00
73	SHAMROCK	1,644.0	98.30	15.0	0.90	14.0	0.80	73.00	95.00	4.00	5.00
74	SHAMROCK	1,708.0	97.40	31.0	1.80	14.0	0.80	76.00	97.00	2.00	3.00
75	SHAMROCK	1,806.0	94.80	84.0	4.40	16.0	0.80	76.00	92.00	7.00	8.00
76	SHAMROCK	1,814.0	95.90	50.0	2.60	27.0	1.40	73.00	88.00	10.00	12.00
77	SHAMROCK	1,798.0	95.40	61.0	3.20	26.0	1.40	70.00	84.00	13.00	16.00
78	SHAMROCK	1,715.0	94.40	71.0	3.90	31.0	1.70	68.00	84.00	13.00	16.00
79	SHAMROCK	1,573.0	93.20	80.0	4.70	35.0	2.10	62.00	82.00	14.00	18.00
80	SHAMROCK	1,420.0	92.30	79.0	5.10	40.0	2.50	62.00	82.00	14.00	18.00
81	SHAMROCK	1,309.0	90.30	90.0	6.20	51.0	3.50	54.00	77.00	16.00	23.00
82	SHAMROCK	1,246.0	87.10	125.0	8.70	60.0	4.20	52.50	76.00	16.50	24.00
83	SHAMROCK	1,219.0	84.10	176.0	12.10	54.0	3.70	54.00	76.00	17.00	24.00
84	SHAMROCK	1,157.0	78.30	253.0	17.10	68.0	4.60	54.00	75.00	18.00	25.00
85	SHAMROCK	1,072.0	70.30	377.0	24.70	76.0	5.00	55.00	73.00	20.00	27.00
86	SHAMROCK	995.0	66.00	431.0	28.60	82.0	5.40	53.00	72.00	21.00	28.00

PAGE: 19

HIGH SCHOOLS, ALL YEARS - SOUTHWEST DEKALB

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	SOUTHWEST DEKALB	1,112.0	95.20	53.0	4.50	3.0	0.30	46.00	92.00	4.00	8.00
70	SOUTHWEST DEKALB	1,265.0	95.80	52.0	3.90	3.0	0.20	51.00	93.00	4.00	7.00
71	SOUTHWEST DEKALB	1,518.0	96.30	56.0	3.60	2.0	0.10	69.00	93.00	5.00	7.00
72	SOUTHWEST DEKALB	1,823.0	98.60	22.0	1.20	4.0	0.20	81.00	95.00	4.00	5.00
73	SOUTHWEST DEKALB	2,091.0	99.10	13.0	0.60	5.0	0.20	86.00	93.00	6.00	7.00
74	SOUTHWEST DEKALB	2,049.0	98.70	18.0	0.90	8.0	0.40	91.00	95.00	5.00	5.00
75	SOUTHWEST DEKALB	1,950.0	98.50	25.0	1.30	5.0	0.20	85.00	92.00	7.00	8.00
76	SOUTHWEST DEKALB	1,838.0	96.80	56.0	2.90	5.0	0.30	77.00	91.00	8.00	9.00
77	SOUTHWEST DEKALB	1,642.0	88.00	214.0	11.50	9.0	0.50	70.00	84.00	13.00	16.00
78	SOUTHWEST DEKALB	1,383.0	70.90	550.0	28.20	18.0	0.90	74.00	82.00	16.00	18.00
79	SOUTHWEST DEKALB	1,028.0	57.00	743.0	41.00	31.0	2.00	69.00	83.00	14.00	17.00
80	SOUTHWEST DEKALB	744.0	44.30	908.0	54.00	29.0	1.80	64.00	81.00	15.00	19.00
81	SOUTHWEST DEKALB	501.0	32.70	1,012.0	66.00	21.0	1.40	57.00	77.00	17.50	23.00
82	SOUTHWEST DEKALB	323.0	23.00	1,058.0	75.30	24.0	1.70	51.00	74.00	17.50	26.00
83	SOUTHWEST DEKALB	188.0	14.50	1,073.0	82.90	33.0	2.60	41.50	65.00	22.50	35.00
84	SOUTHWEST DEKALB	116.0	8.30	1,244.0	89.20	34.0	2.40	45.50	66.00	23.00	34.00
85	SOUTHWEST DEKALB	64.0	4.60	1,329.0	94.00	20.0	1.40	46.00	65.00	24.50	35.00
86	SOUTHWEST DEKALB	39.0	2.90	1,265.0	95.70	17.0	1.30	46.50	67.90	22.00	32.10

PAGE: 20

HIGH SCHOOLS, ALL YEARS - STONE MOUNTAIN

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	STONE MOUNTAIN	685.0	86.20	110.0	13.80	0.0	0.00	36.00	95.00	2.00	5.00
70	STONE MOUNTAIN	752.0	87.70	105.0	12.30	0.0	0.00	40.00	98.00	1.00	2.00
71	STONE MOUNTAIN	900.0	90.50	94.0	9.50	0.0	0.00	41.00	93.00	3.00	7.00
72	STONE MOUNTAIN	1,002.0	93.20	70.0	6.50	3.0	0.30	51.00	94.00	3.00	6.00
73	STONE MOUNTAIN	1,193.0	94.30	67.0	5.30	5.0	0.50	54.00	93.00	4.00	7.00
74	STONE MOUNTAIN	1,318.0	95.00	65.0	4.70	4.0	0.40	63.00	95.00	2.00	3.00
75	STONE MOUNTAIN	1,498.0	95.70	61.0	3.90	6.0	0.40	67.00	92.00	6.00	8.00
76	STONE MOUNTAIN	1,697.0	96.10	64.0	3.60	4.0	0.30	69.00	88.00	9.00	12.00
77	STONE MOUNTAIN	1,792.0	96.20	53.0	2.80	17.0	1.00	70.00	84.00	13.00	16.00
78	STONE MOUNTAIN	1,827.0	96.40	48.0	2.50	21.0	1.20	72.00	83.00	15.00	17.00
79	STONE MOUNTAIN	1,791.0	95.30	63.0	3.40	25.0	1.30	73.00	82.00	16.00	18.00
80	STONE MOUNTAIN	1,689.0	94.60	60.0	3.40	36.0	2.00	71.00	80.00	18.00	20.00
81	STONE MOUNTAIN	1,692.0	93.50	80.0	4.40	38.0	2.10	69.00	78.00	19.00	22.00
82	STONE MOUNTAIN	1,656.0	93.00	83.0	4.70	42.0	2.40	69.00	79.00	18.00	21.00
83	STONE MOUNTAIN	1,740.0	93.60	80.0	4.30	38.0	2.10	68.00	76.00	21.00	24.00
84	STONE MOUNTAIN	1,798.0	93.30	84.0	4.40	45.0	2.30	69.25	75.00	23.00	25.00
85	STONE MOUNTAIN	1,795.0	91.30	110.0	5.60	61.0	3.10	71.00	72.00	27.25	28.00
86	STONE MOUNTAIN	1,355.0	88.00	107.0	7.00	63.0	4.10	71.00	77.00	21.00	23.00

HIGH SCHOOLS, ALL YEARS - TOWERS

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	TOWERS	1,853.0	99.40	3.0	0.20	8.0	0.40	76.00	94.00	5.00	6.00
70	TOWERS	2,010.0	99.40	4.0	0.20	8.0	0.40	81.00	93.00	6.00	7.00
71	TOWERS	2,184.0	99.00	8.0	0.40	13.0	0.60	90.00	96.00	4.00	4.00
72	TOWERS	2,232.0	99.00	14.0	0.60	10.0	0.40	93.00	96.00	4.00	4.00
73	TOWERS	2,109.0	98.30	25.0	1.20	12.0	0.50	96.00	95.00	5.00	5.00
74	TOWERS	2,148.0	98.60	22.0	1.00	9.0	0.40	94.00	95.00	5.00	5.00
75	TOWERS	2,149.0	96.90	55.0	2.50	14.0	0.70	95.00	94.00	6.00	6.00
76	TOWERS	1,715.0	94.40	78.0	4.30	23.0	1.30	73.00	89.00	9.00	11.00
77	TOWERS	1,569.0	88.70	177.0	10.00	22.0	1.20	69.00	81.00	13.00	19.00
78	TOWERS	1,293.0	76.70	376.0	22.30	17.0	1.00	66.00	83.00	14.00	17.00
79	TOWERS	1,022.0	61.50	617.0	37.10	24.0	1.40	62.00	81.00	15.00	19.00
80	TOWERS	847.0	48.90	844.0	48.70	42.0	2.40	68.00	81.00	16.00	19.00
81	TOWERS	752.0	44.20	888.0	52.20	62.0	3.70	64.50	77.00	19.50	23.00
82	TOWERS	684.0	41.60	893.0	54.30	69.0	4.20	63.00	76.00	20.00	24.00
83	TOWERS	635.0	37.80	974.0	58.00	70.0	4.20	63.50	76.00	20.50	24.00
84	TOWERS	548.0	33.10	1,033.0	62.50	73.0	4.40	62.00	76.00	19.50	24.00
85	TOWERS	486.0	31.40	992.0	64.00	71.0	4.60	61.00	75.00	20.00	25.00
86	TOWERS	376.0	26.20	977.0	68.30	77.0	5.40	54.50	72.00	21.00	28.00

HIGH SCHOOLS, ALL YEARS - TUCKER

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	TUCKER	1,807.0	97.80	40.0	2.20	1.0	0.10	74.83	97.00	2.00	3.00
70	TUCKER	1,829.0	98.20	32.0	1.70	1.0	0.10	75.00	97.00	2.00	3.00
71	TUCKER	1,968.0	98.20	36.0	1.80	0.0	0.00	86.00	99.00	1.00	1.00
72	TUCKER	2,009.0	98.30	31.0	1.50	4.0	0.10	92.00	98.00	2.00	2.00
73	TUCKER	2,077.0	98.50	28.0	1.30	4.0	0.20	95.00	97.00	3.00	3.00
74	TUCKER	2,099.0	98.50	23.0	1.10	9.0	0.40	93.00	95.00	2.00	5.00
75	TUCKER	2,134.0	98.10	26.0	1.20	16.0	0.70	93.00	95.00	5.00	5.00
76	TUCKER	2,035.0	98.00	29.0	1.40	12.0	0.50	86.00	91.00	8.30	9.00
77	TUCKER	1,950.0	98.40	27.0	1.40	4.0	0.20	76.00	87.00	11.00	13.00
78	TUCKER	1,808.0	97.90	27.0	1.50	11.0	0.60	70.00	84.00	13.00	16.00
79	TUCKER	1,754.0	97.00	37.0	2.00	18.0	1.00	68.00	83.00	14.00	17.00
80	TUCKER	1,674.0	96.60	39.0	2.30	19.0	1.10	68.00	81.00	16.00	19.00
81	TUCKER	1,593.0	95.90	37.0	2.20	31.0	1.90	63.00	79.00	17.00	21.00
82	TUCKER	1,508.0	95.90	37.0	2.40	27.0	1.70	59.00	78.00	17.00	22.00
83	TUCKER	1,482.0	95.10	37.0	2.40	39.0	2.50	57.00	76.00	18.00	24.00
84	TUCKER	1,416.0	93.90	50.0	3.30	42.0	2.80	54.00	74.00	19.00	26.00
85	TUCKER	1,323.0	90.50	77.0	5.30	61.0	4.20	52.50	74.00	18.00	26.00
86	TUCKER	1,201.0	85.80	111.0	7.90	88.0	6.30	50.50	73.00	18.50	27.00

HIGH SCHOOLS, ALL YEARS - WALKER

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
69	WALKER	2,027.0	98.20	37.0	1.80	1.0	0.00	82.00	96.00	3.00	4.00
70	WALKER	2,011.0	97.20	54.0	2.60	4.0	0.10	83.00	95.00	4.00	5.00
71	WALKER	1,985.0	96.10	78.0	3.80	2.0	0.10	83.00	92.00	7.00	8.00
72	WALKER	1,257.0	87.40	180.0	12.50	2.0	0.10	63.00	91.00	6.00	9.00
73	WALKER	744.0	65.70	386.0	34.10	3.0	0.30	54.00	89.00	7.00	11.00
74	WALKER	493.0	39.40	752.0	60.20	5.0	0.40	44.00	73.00	15.00	27.00
75	WALKER	376.0	27.40	995.0	72.40	3.0	0.20	49.00	72.00	19.00	28.00
76	WALKER	265.0	17.80	1,224.0	82.00	3.0	0.20	53.00	74.00	19.00	26.00
77	WALKER	180.0	11.20	1,428.0	88.60	4.0	0.20	54.00	75.00	18.00	25.00
78	WALKER	129.0	8.00	1,480.0	91.70	5.0	0.30	59.00	76.00	19.00	24.00
79	WALKER	110.0	6.90	1,481.0	93.00	2.0	0.10	62.00	81.00	15.00	19.00
80	WALKER	80.0	4.90	1,561.0	95.00	2.0	0.10	67.00	79.00	18.00	21.00
81	WALKER	51.0	3.10	1,594.0	96.70	4.0	0.20	64.50	77.00	19.00	23.00
82	WALKER	60.0	3.80	1,507.0	95.90	4.0	0.30	56.00	71.00	22.50	29.00
83	WALKER	45.0	3.00	1,448.0	96.70	4.0	0.30	47.00	64.00	26.50	36.00
84	WALKER	26.0	1.90	1,374.0	98.10	0.0	0.00	48.00	67.00	23.50	33.00
85	WALKER	11.0	0.90	1,251.0	99.00	2.0	0.10	41.00	62.00	25.00	38.00
86	WALKER	13.0	1.20	1,038.0	98.50	3.0	0.20	54.50	73.00	20.00	27.00

SPECIAL CENTERS, ALL YEARS - AIDMORE HOSP

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
70	AIDMORE HOSP	0.0	0.00	0.0	0.00	0.0	0.00	5.00	100.00	0.00	0.00
71	AIDMORE HOSP	0.0	0.00	0.0	0.00	0.0	0.00	5.00	100.00	0.00	0.00
72	AIDMORE HOSP	0.0	0.00	0.0	0.00	0.0	0.00	6.00	100.00	0.00	0.00
73	AIDMORE HOSP	0.0	0.00	0.0	0.00	0.0	0.00	5.00	100.00	0.00	0.00
74	AIDMORE HOSP	3.0	75.00	1.0	25.00	0.0	0.00	5.00	100.00	0.00	0.00
75	AIDMORE HOSP	0.0	0.00	0.0	0.00	0.0	0.00	3.00	75.00	1.00	25.00
76	AIDMORE HOSP	2.0	50.00	2.0	50.00	0.0	0.00	3.00	75.00	1.00	25.00

SPECIAL CENTERS, ALL YEARS - BEATRICE DOBBINS

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
70	BEATRICE DOBBINS	0.0	0.00	0.0	0.00	0.0	0.00	3.00	100.00	0.00	0.00
71	BEATRICE DOBBINS	0.0	0.00	0.0	0.00	0.0	0.00	3.00	100.00	0.00	0.00
72	BEATRICE DOBBINS	0.0	0.00	0.0	0.00	0.0	0.00	3.00	100.00	0.00	0.00
74	BEATRICE DOBBINS	3.0	33.30	6.0	66.70	0.0	0.00	7.00	100.00	0.00	0.00
75	BEATRICE DOBBINS	11.0	78.60	3.0	21.40	0.0	0.00	0.00	0.00	0.00	0.00
76	BEATRICE DOBBINS	2.0	22.20	7.0	77.80	0.0	0.00	7.00	88.00	1.00	12.00
77	BEATRICE DOBBINS	12.0	63.20	6.0	60.00	0.0	0.00	5.00	71.00	2.00	29.00
78	BEATRICE DOBBINS	4.0	40.00	6.0	60.00	0.0	0.00	0.00	0.00	0.00	0.00
79	BEATRICE DOBBINS	3.0	75.00	1.0	25.00	0.0	0.00	0.00	0.00	0.00	0.00
80	BEATRICE DOBBINS	11.0	78.60	3.0	21.40	0.0	0.00	3.00	60.00	2.00	40.00
81	BEATRICE DOBBINS	5.0	31.30	11.0	68.80	0.0	0.00	4.00	67.00	2.00	33.00
82	BEATRICE DOBBINS	7.0	70.00	3.0	30.00	0.0	0.00	4.00	80.00	1.00	20.00
83	BEATRICE DOBBINS	3.0	21.40	11.0	78.60	0.0	0.00	4.00	80.00	1.00	20.00
84	BEATRICE DOBBINS	8.0	40.00	12.0	60.00	0.0	0.00	5.00	83.00	1.00	17.00
85	BEATRICE DOBBINS	6.0	35.30	11.0	64.70	0.0	0.00	4.00	67.00	2.00	33.00
86	BEATRICE DOBBINS	5.0	20.80	19.0	79.20	0.0	0.00	0.00	0.00	0.00	0.00

SPECIAL CENTERS, ALL YEARS - BOULDERCREST ED

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
75	BOULDERCREST ED	13.0	61.90	8.0	38.10	0.0	0.00	0.00	0.00	0.00	0.00
76	BOULDERCREST ED	23.0	50.00	22.0	47.80	1.0	2.20	6.00	86.00	1.00	14.00
77	BOULDERCREST ED	40.0	28.40	100.0	70.90	1.0	0.70	12.00	75.00	4.00	25.00
78	BOULDERCREST ED	41.0	54.70	34.0	45.30	0.0	0.00	0.00	0.00	0.00	0.00
79	BOULDERCREST ED	33.0	35.50	60.0	64.50	0.0	0.00	9.00	90.00	1.00	10.00
80	BOULDERCREST ED	34.0	37.80	56.0	62.20	0.0	0.00	9.00	90.00	1.00	10.00

PAGE: 4

SPECIAL CENTERS, ALL YEARS - BROOKHAVEN PRE VOC

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
74	BROOKHAVEN PRE VOC	85.0	60.30	56.0	39.70	0.0	0.00	6.00	55.00	5.00	45.00
75	BROOKHAVEN PRE VOC	96.0	62.30	58.0	37.70	0.0	0.00	6.00	55.00	5.00	45.00

PAGE: 5

SPECIAL CENTERS, ALL YEARS - BRUCE STREET CTR

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
70	BRUCE STREET CTR	0.0	0.00	0.0	0.00	0.0	0.00	3.00	75.00	1.00	25.00
71	BRUCE STREET CTR	0.0	0.00	0.0	0.00	0.0	0.00	3.00	75.00	1.00	25.00
73	BRUCE STREET CTR	0.0	0.00	0.0	0.00	0.0	0.00	2.00	50.00	2.00	50.00
74	BRUCE STREET CTR	16.0	26.70	44.0	73.30	0.0	0.00	3.00	60.00	2.00	40.00
75	BRUCE STREET CTR	40.0	54.80	33.0	45.20	0.0	0.00	1.00	33.00	2.00	67.00
76	BRUCE STREET CTR	37.0	61.70	23.0	38.30	0.0	0.00	1.00	100.00	0.00	0.00
77	BRUCE STREET CTR	0.0	0.00	0.0	0.00	0.0	0.00	3.00	60.00	2.00	40.00

SPECIAL CENTERS, ALL YEARS - CEREBRAL PALSY CTR

YEAR	SCHOOL	STUDENTS WHITE NO.	STUDENTS WHITE %	STUDENTS BLACK NO.	STUDENTS BLACK %	STUDENTS OTHER NO.	STUDENTS OTHER %	FACULTY WHITE NO.	FACULTY WHITE %	FACULTY BLACK NO.	FACULTY BLACK %
70	CEREBRAL PALSY CTR	0.0	0.00	0.0	0.00	0.0	0.00	4.00	100.00	0.00	0.00
71	CEREBRAL PALSY CTR	0.0	0.00	0.0	0.00	0.0	0.00	9.00	100.00	0.00	0.00
72	CEREBRAL PALSY CTR	0.0	0.00	0.0	0.00	0.0	0.00	10.00	100.00	0.00	0.00
73	CEREBRAL PALSY CTR	0.0	0.00	0.0	0.00	0.0	0.00	9.00	100.00	0.00	0.00
74	CEREBRAL PALSY CTR	58.0	90.60	6.0	9.40	0.0	0.00	0.00	0.00	0.00	0.00
76	CEREBRAL PALSY CTR	0.0	0.00	0.0	0.00	0.0	0.00	1.00	33.00	2.00	67.00

SPECIAL CENTERS, ALL YEARS - COMPENSATORY ENGLIS

YEAR	SCHOOL	STUDENTS WHITE NO.	STUDENTS WHITE %	STUDENTS BLACK NO.	STUDENTS BLACK %	STUDENTS OTHER NO.	STUDENTS OTHER %	FACULTY WHITE NO.	FACULTY WHITE %	FACULTY BLACK NO.	FACULTY BLACK %
84	COMPENSATORY ENGLIS	0.0	0.00	0.0	0.00	0.0	0.00	2.50	63.00	1.50	37.00

PAGE: 8

SPECIAL CENTERS, ALL YEARS - COMPENSATORY MATH

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
84	COMPENSATORY MATH	0.0	0.00	0.0	0.00	0.0	0.00	4.00	44.00	5.00	56.00

PAGE:

SPECIAL CENTERS, ALL YEARS - CORALWOOD CTR

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
74	CORALWOOD CTR	13.0	86.70	2.0	13.30	0.0	0.00	23.00	96.00	1.00	4.00
75	CORALWOOD CTR	64.0	94.10	4.0	5.90	0.0	0.00	28.00	93.00	2.00	7.00
76	CORALWOOD CTR	97.0	93.30	7.0	6.70	0.0	0.00	22.00	96.00	1.00	4.00
77	CORALWOOD CTR	65.0	91.50	6.0	8.50	0.0	0.00	21.00	91.00	2.00	9.00
78	CORALWOOD CTR	103.0	91.20	5.0	4.40	5.0	4.40	0.00	0.00	0.00	0.00
79	CORALWOOD CTR	127.0	89.40	12.0	8.50	3.0	2.10	22.00	92.00	2.00	8.00
80	CORALWOOD CTR	107.0	85.60	16.0	12.80	2.0	1.60	24.00	92.00	2.00	8.00
81	CORALWOOD CTR	79.0	83.20	16.0	16.80	0.0	0.00	25.00	91.00	2.50	9.00
82	CORALWOOD CTR	87.0	80.60	21.0	19.40	0.0	0.00	25.50	91.00	2.50	9.00
83	CORALWOOD CTR	111.0	80.40	25.0	18.10	2.0	1.40	23.50	87.00	3.50	13.00
84	CORALWOOD CTR	106.0	85.50	17.0	13.70	1.0	0.80	27.00	92.00	2.50	8.00
85	CORALWOOD CTR	105.0	86.80	15.0	12.40	1.0	0.80	23.75	84.10	4.51	15.90
86	CORALWOOD CTR	99.0	78.60	26.0	20.60	1.0	0.80	0.00	0.00	0.00	0.00

SPECIAL CENTERS, ALL YEARS - COUNTY LINE CTR

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
70	COUNTY LINE CTR	0.0	0.00	0.0	0.00	0.0	0.00	1.00	50.00	1.00	50.00
71	COUNTY LINE CTR	0.0	0.00	0.0	0.00	0.0	0.00	1.00	50.00	1.00	50.00
73	COUNTY LINE CTR	0.0	0.00	0.0	0.00	0.0	0.00	1.00	50.00	1.00	50.00
74	COUNTY LINE CTR	1.0	2.10	46.0	95.80	1.0	2.10	2.00	67.00	1.00	33.00
75	COUNTY LINE CTR	21.0	45.70	24.0	52.20	1.0	2.20	1.00	50.00	1.00	50.00
76	COUNTY LINE CTR	16.0	37.20	27.0	62.80	0.0	0.00	1.00	50.00	1.00	50.00

SPECIAL CENTERS, ALL YEARS - DEKALB EVALUATION

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
77	DEKALB EVALUATION	0.0	0.00	0.0	0.00	0.0	0.00	1.00	100.00	0.00	0.00
79	DEKALB EVALUATION	0.0	0.00	0.0	0.00	0.0	0.00	1.00	50.00	1.00	50.00
80	DEKALB EVALUATION	0.0	0.00	0.0	0.00	0.0	0.00	1.00	100.00	0.00	0.00

PAGE: 13

SPECIAL CENTERS, ALL YEARS - DEKALB TECH

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
74	DEKALB TECH	0.0	0.00	0.0	0.00	0.0	0.00	1.00	100.00	0.00	0.00
75	DEKALB TECH	0.0	0.00	0.0	0.00	0.0	0.00	1.00	100.00	0.00	0.00
76	DEKALB TECH	0.0	0.00	0.0	0.00	0.0	0.00	1.00	100.00	0.00	0.00

PAGE: 14

SPECIAL CENTERS, ALL YEARS - DORAVILLE ED CTR

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
72	DORAVILLE ED CTR	0.0	0.00	0.0	0.00	0.0	0.00	9.00	90.00	1.00	10.00
73	DORAVILLE ED CTR	0.0	0.00	0.0	0.00	0.0	0.00	13.00	87.00	2.00	13.00
74	DORAVILLE ED CTR	14.0	100.00	0.0	0.00	0.0	0.00	43.00	93.00	3.00	7.00

PAGE: 15

SPECIAL CENTERS, ALL YEARS - DRIVER ED

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
84	DRIVER ED	0.0	0.00	0.0	0.00	0.0	0.00	15.00	79.00	4.00	21.00

PAGE: 16

SPECIAL CENTERS, ALL YEARS - F CRITTENTON

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
70	F CRITTENTON	0.0	0.00	0.0	0.00	0.0	0.00	4.00	100.00	0.00	0.00
71	F CRITTENTON	0.0	0.00	0.0	0.00	0.0	0.00	6.00	100.00	0.00	0.00
72	F CRITTENTON	0.0	0.00	0.0	0.00	0.0	0.00	5.00	83.00	1.00	17.00
73	F CRITTENTON	0.0	0.00	0.0	0.00	0.0	0.00	4.00	100.00	0.00	0.00
74	F CRITTENTON	0.0	0.00	0.0	0.00	0.0	0.00	4.00	100.00	0.00	0.00
75	F CRITTENTON	0.0	0.00	0.0	0.00	0.0	0.00	4.00	100.00	0.00	0.00
76	F CRITTENTON	0.0	0.00	0.0	0.00	0.0	0.00	5.00	100.00	0.00	0.00
77	F CRITTENTON	0.0	0.00	0.0	0.00	0.0	0.00	3.00	100.00	0.00	0.00
79	F CRITTENTON	0.0	0.00	0.0	0.00	0.0	0.00	3.00	50.00	3.00	50.00
80	F CRITTENTON	0.0	0.00	0.0	0.00	0.0	0.00	3.00	100.00	0.00	0.00

PAGE: 17

SPECIAL CENTERS, ALL YEARS - FERNBANK SCIENCE

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
74	FERNBANK SCIENCE	0.0	0.00	0.0	0.00	0.0	0.00	1.00	100.00	0.00	0.00
75	FERNBANK SCIENCE	0.0	0.00	0.0	0.00	0.0	0.00	1.00	100.00	0.00	0.00
76	FERNBANK SCIENCE	0.0	0.00	0.0	0.00	0.0	0.00	1.00	100.00	0.00	0.00
84	FERNBANK SCIENCE	0.0	0.00	0.0	0.00	0.0	0.00	38.00	91.00	4.00	9.00

PAGE: 18

SPECIAL CENTERS, ALL YEARS - H EGLESTON HOSP

YEAR	SCH	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
70	H EGLESTON HOSP	0.0	0.00	0.0	0.00	0.0	0.00	2.00	100.00	0.00	0.00
71	H EGLESTON HOSP	0.0	0.00	0.0	0.00	0.0	0.00	2.00	100.00	0.00	0.00
72	H EGLESTON HOSP	0.0	0.00	0.0	0.00	0.0	0.00	2.00	100.00	0.00	0.00
74	H EGLESTON HOSP	9.0	81.80	2.0	18.20	0.0	0.00	1.00	100.00	0.00	0.00
75	H EGLESTON HOSP	11.0	91.70	1.0	8.30	0.0	0.00	1.00	100.00	0.00	0.00
76	H EGLESTON HOSP	12.0	92.30	1.0	7.70	0.0	0.00	2.00	100.00	0.00	0.00
77	H EGLESTON HOSP	0.0	0.00	0.0	0.00	0.0	0.00	1.00	100.00	0.00	0.00
79	H EGLESTON HOSP	8.0	80.00	2.0	20.00	0.0	0.00	2.00	50.00	2.00	50.00
80	H EGLESTON HOSP	6.0	85.70	1.0	14.30	0.0	0.00	1.00	100.00	0.00	0.00
81	H EGLESTON HOSP	3.0	75.00	1.0	25.00	0.0	0.00	0.00	0.00	0.00	0.00
82	H EGLESTON HOSP	13.0	76.50	4.0	23.50	0.0	0.00	0.00	0.00	0.00	0.00
83	H EGLESTON HOSP	9.0	69.20	4.0	30.80	0.0	0.00	0.00	0.00	0.00	0.00
84	H EGLESTON HOSP	8.0	66.70	4.0	33.30	0.0	0.00	0.00	0.00	0.00	0.00
85	H EGLESTON HOSP	17.0	70.80	7.0	29.20	0.0	0.00	0.00	0.00	0.00	0.00

SPECIAL CENTERS, ALL YEARS - HAMILTON ALT

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
71	HAMILTON ALT	0.0	0.00	0.0	0.00	0.0	0.00	5.00	50.00	5.00	50.00
72	HAMILTON ALT	0.0	0.00	0.0	0.00	0.0	0.00	7.00	58.00	5.00	42.00
73	HAMILTON ALT	0.0	0.00	0.0	0.00	0.0	0.00	6.00	67.00	3.00	33.00
79	HAMILTON ALT	11.0	61.10	5.0	27.80	2.0	11.10	0.00	0.00	0.00	0.00
82	HAMILTON ALT	0.0	0.00	0.0	0.00	0.0	0.00	5.50	73.00	2.00	27.00
84	HAMILTON ALT	0.0	0.00	0.0	0.00	0.0	0.00	6.00	75.00	2.00	25.00
86	HAMILTON ALT	0.0	0.00	0.0	0.00	0.0	0.00	10.00	71.40	4.00	28.60

SPECIAL CENTERS, ALL YEARS - HEALTH DEPT

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
77	HEALTH DEPT	10.0	76.90	3.0	23.10	0.0	0.00	5.00	100.00	0.00	0.00
79	HEALTH DEPT	15.0	93.80	1.0	6.30	0.0	0.00	0.00	0.00	0.00	0.00

SPECIAL CENTERS, ALL YEARS - HERITAGE CTR

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
75	HERITAGE CTR	93.0	89.40	10.0	9.60	1.0	1.00	0.00	0.00	0.00	0.00
78	HERITAGE CTR	104.0	78.80	23.0	17.40	5.0	3.80	0.00	0.00	0.00	0.00
79	HERITAGE CTR	88.0	83.80	17.0	16.20	0.0	0.00	23.00	50.00	23.00	50.00
80	HERITAGE CTR	0.0	0.00	0.0	0.00	0.0	0.00	23.00	100.00	0.00	0.00
81	HERITAGE CTR	72.0	69.20	29.0	27.90	3.0	2.90	30.00	86.00	5.00	14.00
82	HERITAGE CTR	71.0	69.60	28.0	27.50	3.0	2.90	26.50	79.00	7.00	21.00
83	HERITAGE CTR	64.0	61.00	37.0	35.20	4.0	3.80	28.00	82.00	6.00	18.00
84	HERITAGE CTR	51.0	56.00	37.0	40.70	3.0	3.30	26.00	83.00	5.50	17.00
85	HERITAGE CTR	45.0	48.90	43.0	46.70	4.0	4.30	24.75	72.80	9.25	27.20
86	HERITAGE CTR	40.0	45.40	46.0	52.30	2.0	2.30	0.00	0.00	0.00	0.00

SPECIAL CENTERS, ALL YEARS - ITINERANT FOR LANG

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
84	ITINERANT FOR LANG	0.0	0.00	0.0	0.00	0.0	0.00	4.00	100.00	0.00	0.00
84	ITINERANT FOR LANG	0.0	0.00	0.0	0.00	0.0	0.00	8.50	90.00	1.00	10.00

PAGE: 23

SPECIAL CENTERS, ALL YEARS - JUVENILE DETENTION

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
73	JUVENILE DETENTION	0.0	0.00	0.0	0.00	0.0	0.00	7.00	100.00	0.00	0.00
75	JUVENILE DETENTION	0.0	0.00	0.0	0.00	0.0	0.00	7.00	100.00	0.00	0.00

PAGE: 24

SPECIAL CENTERS, ALL YEARS - LYNWOOD PARK CTR

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
70	LYNWOOD PARK CTR	0.0	0.00	0.0	0.00	0.0	0.00	2.00	67.00	1.00	33.00
71	LYNWOOD PARK CTR	0.0	0.00	0.0	0.00	0.0	0.00	4.00	100.00	0.00	0.00
73	LYNWOOD PARK CTR	0.0	0.00	0.0	0.00	0.0	0.00	3.00	75.00	1.00	25.00
74	LYNWOOD PARK CTR	28.0	46.70	30.0	50.00	2.0	3.30	3.00	60.00	2.00	40.00

PAGE: 25

SPECIAL CENTERS, ALL YEARS - MARGARET HARRIS

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
75	MARGARET HARRIS	0.0	0.00	0.0	0.00	0.0	0.00	18.00	86.00	3.00	14.00
76	MARGARET HARRIS	99.0	87.60	13.0	11.50	1.0	0.90	17.00	81.00	4.00	9.00
77	MARGARET HARRIS	91.0	78.40	22.0	19.00	3.0	2.60	20.00	87.00	3.00	13.00
78	MARGARET HARRIS	98.0	74.80	33.0	25.20	0.0	0.00	0.00	0.00	0.00	0.00
79	MARGARET HARRIS	108.0	74.50	34.0	23.40	3.0	2.10	16.50	94.00	1.00	6.00
80	MARGARET HARRIS	104.0	69.30	42.0	28.00	4.0	2.70	18.00	90.00	2.00	10.00
81	MARGARET HARRIS	104.0	69.30	42.0	28.00	4.0	2.70	22.00	71.00	9.00	29.00
82	MARGARET HARRIS	108.0	60.70	64.0	36.00	6.0	3.40	24.00	75.00	8.00	25.00
83	MARGARET HARRIS	120.0	62.20	69.0	35.80	4.0	2.10	29.50	77.00	9.00	23.00
84	MARGARET HARRIS	105.0	62.50	60.0	35.70	3.0	1.80	26.00	74.00	9.00	26.00
85	MARGARET HARRIS	105.0	61.00	63.0	36.60	4.0	2.30	26.00	71.20	10.50	28.80
86	MARGARET HARRIS	91.0	58.70	59.0	38.00	5.0	3.20	0.00	0.00	0.00	0.00

PAGE: 26

SPECIAL CENTERS, ALL YEARS - OCCUPATIONAL ED CTR

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
73	OCCUPATIONAL ED CTR	0.0	0.00	0.0	0.00	0.0	0.00	1.00	100.00	0.00	0.00
74	OCCUPATIONAL ED CTR	0.0	0.00	0.0	0.00	0.0	0.00	1.00	100.00	0.00	0.00
75	OCCUPATIONAL ED CTR	0.0	0.00	0.0	0.00	0.0	0.00	1.00	100.00	0.00	0.00
76	OCCUPATIONAL ED CTR	0.0	0.00	0.0	0.00	0.0	0.00	1.00	100.00	0.00	0.00

SPECIAL CENTERS, ALL YEARS - OEC CENTRAL

YEAR	SCHOOL	STUDENTS WHITE NO.	STUDENTS WHITE %	STUDENTS BLACK NO.	STUDENTS BLACK %	STUDENTS OTHER NO.	STUDENTS OTHER %	FACULTY WHITE NO.	FACULTY WHITE %	FACULTY BLACK NO.	FACULTY BLACK %
84	OEC CENTRAL	0.0	0.00	0.0	0.00	0.0	0.00	13.00	59.00	8.50	41.00
85	OEC CENTRAL	0.0	0.00	0.0	0.00	0.0	0.00	13.00	61.20	8.25	38.80

SPECIAL CENTERS, ALL YEARS - OEC NORTH

YEAR	SCHOOL	STUDENTS WHITE NO.	STUDENTS WHITE %	STUDENTS BLACK NO.	STUDENTS BLACK %	STUDENTS OTHER NO.	STUDENTS OTHER %	FACULTY WHITE NO.	FACULTY WHITE %	FACULTY BLACK NO.	FACULTY BLACK %
84	OEC NORTH	0.0	0.00	0.0	0.00	0.0	0.00	18.00	95.00	1.00	5.00

SPECIAL CENTERS, ALL YEARS - OEC SOUTH

YEAR	SCHOOL	STUDENTS WHITE NO.	STUDENTS WHITE %	STUDENTS BLACK NO.	STUDENTS BLACK %	STUDENTS OTHER NO.	STUDENTS OTHER %	FACULTY WHITE NO.	FACULTY WHITE %	FACULTY BLACK NO.	FACULTY BLACK %
84	OEC SOUTH	0.0	0.00	0.0	0.00	0.0	0.00	12.00	80.00	3.00	20.00

SPECIAL CENTERS, ALL YEARS - OPEN CAMPUS

YEAR	SCHOOL	STUDENTS WHITE NO.	STUDENTS WHITE %	STUDENTS BLACK NO.	STUDENTS BLACK %	STUDENTS OTHER NO.	STUDENTS OTHER %	FACULTY WHITE NO.	FACULTY WHITE %	FACULTY BLACK NO.	FACULTY BLACK %
86	OPEN CAMPUS	366.0	50.20	349.0	47.90	14.0	1.90	32.00	76.00	10.00	24.00

PAGE: 31

SPECIAL CENTERS, ALL YEARS - OPEN CAMPUS EAST

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
75	OPEN CAMPUS EAST	267.0	88.10	36.0	11.90	0.0	0.00	13.00	93.00	1.00	7.00
76	OPEN CAMPUS EAST	260.0	82.50	53.0	16.80	2.0	0.60	0.00	0.00	0.00	0.00
77	OPEN CAMPUS EAST	310.0	86.60	45.0	12.60	3.0	0.80	14.00	88.00	2.00	12.00
78	OPEN CAMPUS EAST	308.0	77.40	88.0	22.10	2.0	0.50	0.00	0.00	0.00	0.00
79	OPEN CAMPUS EAST	419.0	75.00	134.0	24.00	6.0	1.10	0.00	0.00	0.00	0.00
80	OPEN CAMPUS EAST	508.0	69.40	270.0	34.50	5.0	0.60	0.00	0.00	0.00	0.00
81	OPEN CAMPUS EAST	464.0	66.30	233.0	33.30	3.0	0.40	0.00	0.00	0.00	0.00
82	OPEN CAMPUS EAST	412.0	60.10	264.0	38.50	10.0	1.50	30.00	82.00	6.50	18.00
83	OPEN CAMPUS EAST	371.0	57.00	278.0	42.70	2.0	0.30	0.00	0.00	0.00	0.00
84	OPEN CAMPUS EAST	334.0	59.00	222.0	39.30	9.0	1.60	29.50	83.00	6.00	17.00

PAGE: 32

SPECIAL CENTERS, ALL YEARS - OPEN CAMPUS WEST

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
75	OPEN CAMPUS WEST	462.0	93.70	27.0	5.50	4.0	0.80	22.00	96.00	1.00	4.00
76	OPEN CAMPUS WEST	446.0	93.70	28.0	5.90	2.0	0.40	0.00	0.00	0.00	0.00
77	OPEN CAMPUS WEST	401.0	90.10	35.0	7.90	9.0	2.00	19.00	86.00	3.00	14.00
78	OPEN CAMPUS WEST	378.0	91.10	33.0	8.00	4.0	1.00	0.00	0.00	0.00	0.00
79	OPEN CAMPUS WEST	304.0	86.40	41.0	11.60	7.0	2.00	0.00	0.00	0.00	0.00
80	OPEN CAMPUS WEST	391.0	81.10	80.0	16.60	11.0	2.30	0.00	0.00	0.00	0.00
81	OPEN CAMPUS WEST	304.0	66.40	135.0	29.50	19.0	4.10	0.00	0.00	0.00	0.00
82	OPEN CAMPUS WEST	253.0	56.90	158.0	35.50	34.0	7.60	215.00	81.00	5.00	19.00
83	OPEN CAMPUS WEST	200.0	53.10	146.0	38.70	31.0	8.20	0.00	0.00	0.00	0.00
84	OPEN CAMPUS WEST	218.0	53.80	171.0	42.20	16.0	4.00	20.50	76.00	6.50	24.00
85	OPEN CAMPUS WEST	279.0	42.30	351.0	53.30	29.0	4.40	0.00	0.00	0.00	0.00

PAGE: 33

SPECIAL CENTERS, ALL YEARS - PSYCHOLOGICAL SVCS

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
82	PSYCHOLOGICAL SVCS	0.0	0.00	0.0	0.00	0.0	0.00	19.00	70.00	8.00	30.00
83	PSYCHOLOGICAL SVCS	0.0	0.00	0.0	0.00	0.0	0.00	22.00	70.00	9.50	30.00
84	PSYCHOLOGICAL SVCS	0.0	0.00	0.0	0.00	0.0	0.00	18.00	67.00	9.00	33.00

PAGE: 34

SPECIAL CENTERS, ALL YEARS - READING CTR

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
84	READING CTR	0.0	0.00	0.0	0.00	0.0	0.00	9.00	64.00	5.00	36.00

PAGE: 35

SPECIAL CENTERS, ALL YEARS - ROBERT SHAW CTR

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
71	ROBERT SHAW CTR	0.0	0.00	0.0	0.00	0.0	0.00	4.00	100.00	0.00	0.00
73	ROBERT SHAW CTR	0.0	0.00	0.0	0.00	0.0	0.00	4.00	100.00	0.00	0.00
74	ROBERT SHAW CTR	73.0	54.90	59.0	44.40	1.0	0.80	9.00	100.00	0.00	0.00
75	ROBERT SHAW CTR	45.0	45.90	53.0	54.10	0.0	0.00	3.00	75.00	1.00	25.00
76	ROBERT SHAW CTR	0.0	0.00	0.0	0.00	0.0	0.00	3.00	75.00	1.00	25.00

PAGE: 36

SPECIAL CENTERS, ALL YEARS - ROBERT SHAW SYSTEM

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
70	ROBERT SHAW SYSTEM	0.0	0.00	0.0	0.00	0.0	0.00	68.00	92.00	8.00	8.00
71	ROBERT SHAW SYSTEM	0.0	0.00	0.0	0.00	0.0	0.00	77.00	94.00	5.00	6.00
72	ROBERT SHAW SYSTEM	0.0	0.00	0.0	0.00	0.0	0.00	116.00	93.00	9.00	7.00
73	ROBERT SHAW SYSTEM	0.0	0.00	0.0	0.00	0.0	0.00	118.00	94.00	7.00	6.00
74	ROBERT SHAW SYSTEM	0.0	0.00	0.0	0.00	0.0	0.00	106.00	95.00	6.00	5.00
75	ROBERT SHAW SYSTEM	0.0	0.00	0.0	0.00	0.0	0.00	99.00	93.00	7.00	7.00
76	ROBERT SHAW SYSTEM	58.0	47.20	65.0	52.80	0.0	0.00	101.00	91.00	10.00	9.00
77	ROBERT SHAW SYSTEM	0.0	0.00	0.0	0.00	0.0	0.00	59.00	88.00	8.00	12.00
79	ROBERT SHAW SYSTEM	0.0	0.00	0.0	0.00	0.0	0.00	124.00	90.00	14.00	10.00
80	ROBERT SHAW SYSTEM	0.0	0.00	0.0	0.00	0.0	0.00	84.00	86.00	14.00	14.00

PAGE: 37

SPECIAL CENTERS, ALL YEARS - S DEK CHILD CTR

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
70	S DEK CHILD CTR	0.0	0.00	0.0	0.00	0.0	0.00	14.00	93.00	1.00	7.00
71	S DEK CHILD CTR	0.0	0.00	0.0	0.00	0.0	0.00	14.00	93.00	1.00	7.00
72	S DEK CHILD CTR	0.0	0.00	0.0	0.00	0.0	0.00	15.00	94.00	1.00	6.00
73	S DEK CHILD CTR	0.0	0.00	0.0	0.00	0.0	0.00	16.00	94.00	1.00	6.00
74	S DEK CHILD CTR	29.0	46.00	34.0	54.00	0.0	0.00	13.00	93.00	1.00	7.00
75	S DEK CHILD CTR	29.0	46.00	34.0	54.00	0.0	0.00	16.00	94.00	1.00	6.00
76	S DEK CHILD CTR	35.0	51.50	33.0	48.50	0.0	0.00	14.00	88.00	2.00	12.00
77	S DEK CHILD CTR	19.0	55.90	15.0	44.10	0.0	0.00	13.00	87.00	2.00	13.00
78	S DEK CHILD CTR	27.0	58.70	19.0	41.30	0.0	0.00	0.00	0.00	0.00	0.00

PAGE: 38

SPECIAL CENTERS, ALL YEARS - SCOTTDALE PRE ADULT

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
70	SCOTTDALE PRE ADULT	0.0	0.00	0.0	0.00	0.0	0.00	5.00	100.00	0.00	0.00
71	SCOTTDALE PRE ADULT	0.0	0.00	0.0	0.00	0.0	0.00	7.00	100.00	0.00	0.00
72	SCOTTDALE PRE ADULT	0.0	0.00	0.0	0.00	0.0	0.00	10.00	100.00	0.00	0.00
73	SCOTTDALE PRE ADULT	0.0	0.00	0.0	0.00	0.0	0.00	10.00	100.00	0.00	0.00
74	SCOTTDALE PRE ADULT	86.0	85.10	15.0	14.90	0.0	0.00	3.00	75.00	1.00	25.00
75	SCOTTDALE PRE ADULT	79.0	82.30	16.0	16.70	1.0	1.00	8.00	100.00	0.00	0.00
76	SCOTTDALE PRE ADULT	85.0	81.70	18.0	17.30	1.0	1.00	8.00	100.00	0.00	0.00
77	SCOTTDALE PRE ADULT	81.0	75.70	25.0	23.40	1.0	0.90	8.00	89.00	1.00	11.00

SPECIAL CENTERS, ALL YEARS - SEXTON WOODS

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
75	SEXTON WOODS	0.0	0.00	0.0	0.00	0.0	0.00	3.00	60.00	2.00	40.00
76	SEXTON WOODS	0.0	0.00	0.0	0.00	0.0	0.00	3.00	60.00	2.00	40.00

SPECIAL CENTERS, ALL YEARS - SEXTON WOODS CTR

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
75	SEXTON WOODS CTR	101.0	76.50	24.0	18.20	7.0	5.30	58.00	92.00	5.00	8.00
76	SEXTON WOODS CTR	146.0	79.30	36.0	19.60	2.0	1.10	15.00	100.00	0.00	0.00
77	SEXTON WOODS CTR	54.0	81.80	12.0	18.20	0.0	0.00	22.00	96.00	1.00	4.00
78	SEXTON WOODS CTR	40.0	90.90	4.0	9.10	0.0	0.00	0.00	0.00	0.00	0.00
79	SEXTON WOODS CTR	43.0	91.50	2.0	4.30	2.0	4.30	20.00	93.00	1.50	7.00
80	SEXTON WOODS CTR	0.0	0.00	0.0	0.00	0.0	0.00	23.00	96.00	1.00	4.00
81	SEXTON WOODS CTR	0.0	0.00	0.0	0.00	0.0	0.00	23.00	81.00	5.50	19.00
82	SEXTON WOODS CTR	0.0	0.00	0.0	0.00	0.0	0.00	21.00	78.00	6.00	22.00
83	SEXTON WOODS CTR	0.0	0.00	0.0	0.00	0.0	0.00	29.00	83.00	6.00	17.00
84	SEXTON WOODS CTR	0.0	0.00	0.0	0.00	0.0	0.00	30.00	86.00	5.00	14.00
85	SEXTON WOODS CTR	0.0	0.00	0.0	0.00	0.0	0.00	26.00	76.50	8.00	23.50

SPECIAL CENTERS, ALL YEARS - TUCKER CHILD CTR

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
70	TUCKER CHILD CTR	0.0	0.00	0.0	0.00	0.0	0.00	3.00	100.00	0.00	0.00
71	TUCKER CHILD CTR	0.0	0.00	0.0	0.00	0.0	0.00	4.00	100.00	0.00	0.00
72	TUCKER CHILD CTR	0.0	0.00	0.0	0.00	0.0	0.00	4.00	100.00	0.00	0.00
73	TUCKER CHILD CTR	0.0	0.00	0.0	0.00	0.0	0.00	4.00	100.00	0.00	0.00
74	TUCKER CHILD CTR	31.0	93.90	2.0	6.10	0.0	0.00	4.00	100.00	0.00	0.00

SPECIAL CENTERS, ALL YEARS - VICTORIA SIMMONS

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
70	VICTORIA SIMMONS	0.0	0.00	0.0	0.00	0.0	0.00	2.00	100.00	0.00	0.00
71	VICTORIA SIMMONS	0.0	0.00	0.0	0.00	0.0	0.00	1.00	50.00	1.00	50.00
73	VICTORIA SIMMONS	0.0	0.00	0.0	0.00	0.0	0.00	2.00	100.00	0.00	0.00
74	VICTORIA SIMMONS	24.0	88.80	2.0	7.40	1.0	3.70	2.00	100.00	0.00	0.00
75	VICTORIA SIMMONS	45.0	64.30	24.0	34.30	1.0	1.40	2.00	67.00	1.00	33.00
76	VICTORIA SIMMONS	0.0	0.00	0.0	0.00	0.0	0.00	2.00	67.00	1.00	33.00

PAGE: 43

SPECIAL CENTERS, ALL YEARS - WESLEY CHAPEL

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
79	WESLEY CHAPEL	0.0	0.00	0.0	0.00	0.0	0.00	15.00	88.00	2.00	12.00
80	WESLEY CHAPEL	0.0	0.00	0.0	0.00	0.0	0.00	16.00	84.00	3.00	16.00
81	WESLEY CHAPEL	0.0	0.00	0.0	0.00	0.0	0.00	18.50	77.00	5.50	23.00
82	WESLEY CHAPEL	0.0	0.00	0.0	0.00	0.0	0.00	17.50	76.00	5.50	24.00
83	WESLEY CHAPEL	0.0	0.00	0.0	0.00	0.0	0.00	16.50	66.00	8.50	34.00
84	WESLEY CHAPEL	0.0	0.00	0.0	0.00	0.0	0.00	16.50	67.00	8.00	33.00
85	WESLEY CHAPEL	0.0	0.00	0.0	0.00	0.0	0.00	17.00	66.70	8.50	33.30

PAGE: 44

SPECIAL CENTERS, ALL YEARS - WRITING CTR

YEAR	SCHOOL	STUDENTS WHITE NO.	WHITE %	BLACK NO.	BLACK %	OTHER NO.	OTHER %	FACULTY WHITE NO.	WHITE %	BLACK NO.	BLACK %
84	WRITING CTR	0.0	0.00	0.0	0.00	0.0	0.00	6.00	67.00	3.00	33.00
84	WRITING CTR	0.0	0.00	0.0	0.00	0.0	0.00	9.00	82.00	2.00	18.00

DEFENDANT'S EXHIBIT 60

SUMMARY OF SCHOOL BOUNDARY CHANGE EFFECTS,
1969 TO 1986

PREDOMINATELY WHITE SCHOOLS	
No significant effects[a]	133
Significant desegregative effects	0
Significant segregative effects	0
PREDOMINATELY BLACK SCHOOLS	
No significant effects	13
Significant desegregative effects	0
Significant segregative effects	0
MIXED SCHOOLS[b]	
No significant effects	16
Significant desegregative effects	5
Significant segregative effects	1[c]
Both segregative and desegregative effects	2[d]
TOTAL CHANGES	170

NOTES:

[a] Significant means a school would change in a segregative or desegregative direction by more than 5 percentage points

[b] One school has 20-50% black, or one school is predominately white and one predominately black

[c] Columbia to Rainbow in 1977

[d] Clifton-Meadowview-Boulderc rest in 1974, Indian Creek to Mclendon in 1986

DEFENDANT'S EXHIBIT 61

FACULTY RACIAL BALANCE IN THE
DEKALB COUNTY SCHOOLS
FALL, 1986

Student Composition	Average Percent Black Faculty	
	Elementary	High Schools
0-25% Black	23%	25%
26-50% Black	24%	27%
51-75% Black	30%	27%
76-99% Black	33%	32%
All Schools	28%	27%

SCHOOLS DEVIATING FROM A BROAD FACULTY BALANCE STANDARD *

Elementary standard is 13 to 43% black: No schools

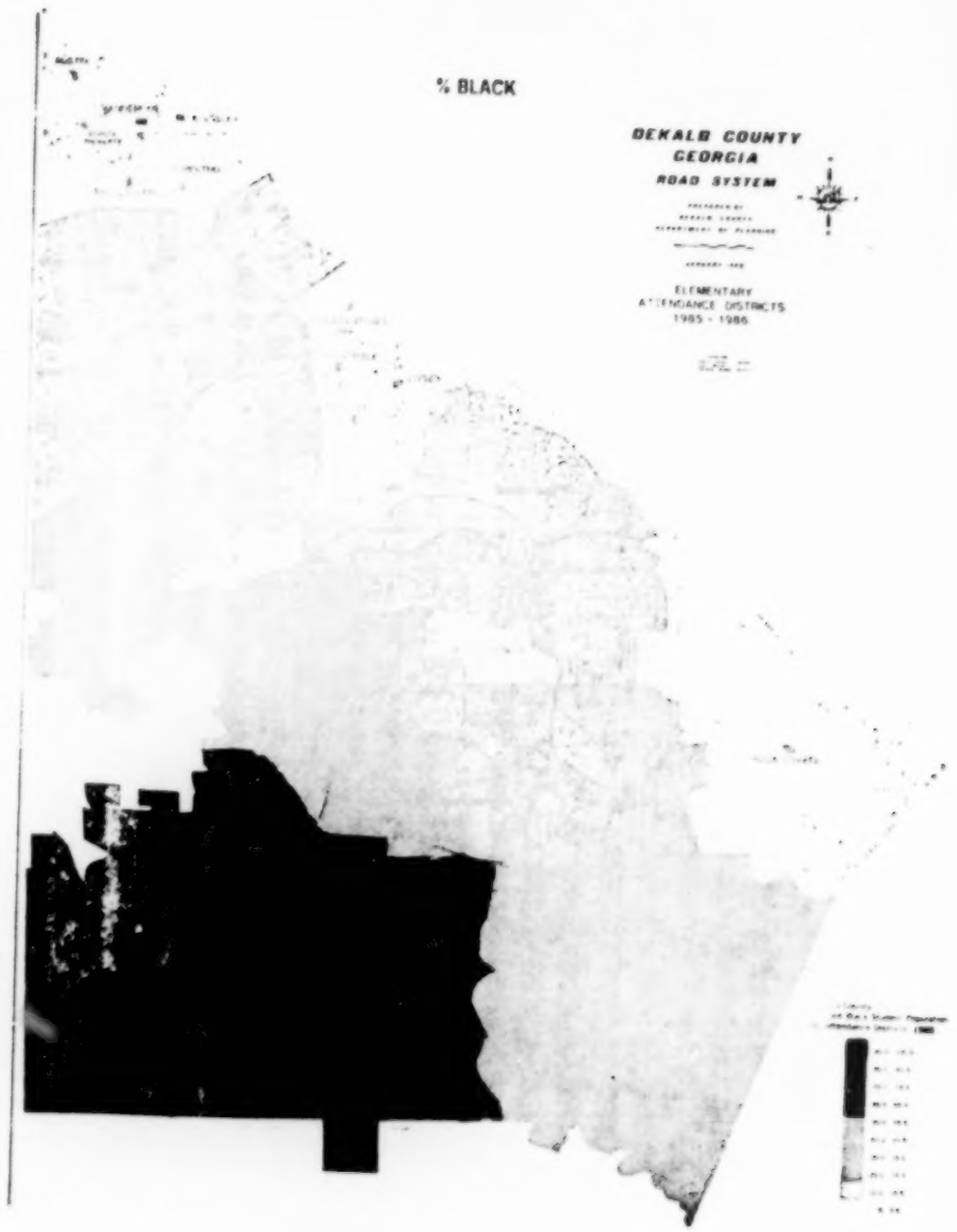
High School standard is 17 to 37% black: No schools

SCHOOLS DEVIATING FROM A NARROW FACULTY BALANCE STANDARD *

School	Percent Black	No. of Teachers Requiring Shift to Attain Balance
Elementary standard is 18 to 38% black:		
Austin	13%	2
Hightower	14%	1
Laurel Ridge	16%	1
Kingsly	17%	1
Terry Mill	41%	1
Gresham Park	43%	2
High School standard is 22 to 32% black:		
Columbia	35%	3
Gordon	35%	2
TOTALS	8 Schools	13 Teachers

* The broad standard is the district-wide percent black plus or minus 15% for elementary and plus or minus 10% for high schools; the narrow standard is plus or minus 10% for elementary and plus or minus 5% for high schools. These standards allow for greater variability for elementary schools due to smaller faculties.

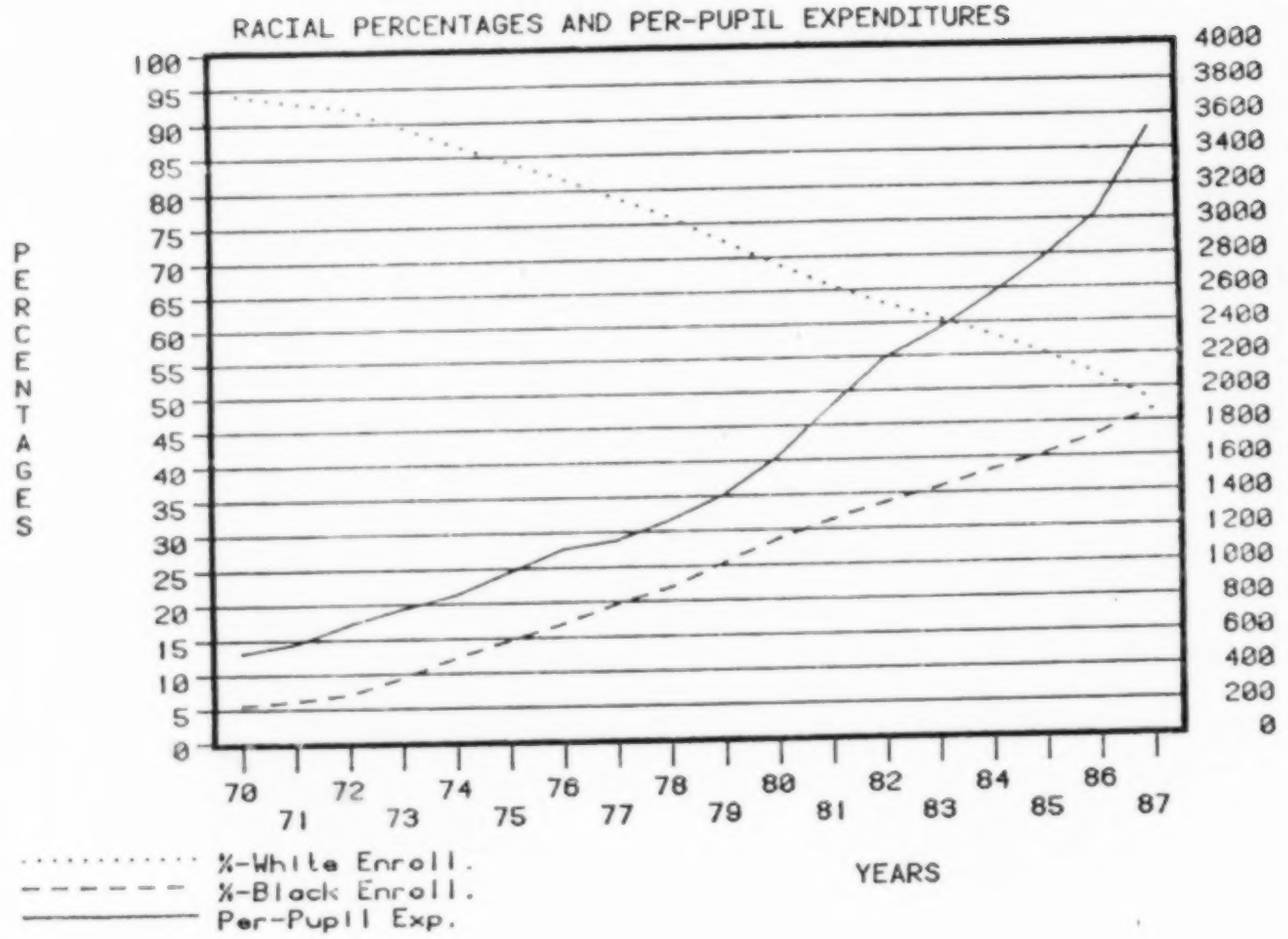
DEFENDANT'S EXHIBIT 73



DEFENDANT'S EXHIBIT 216

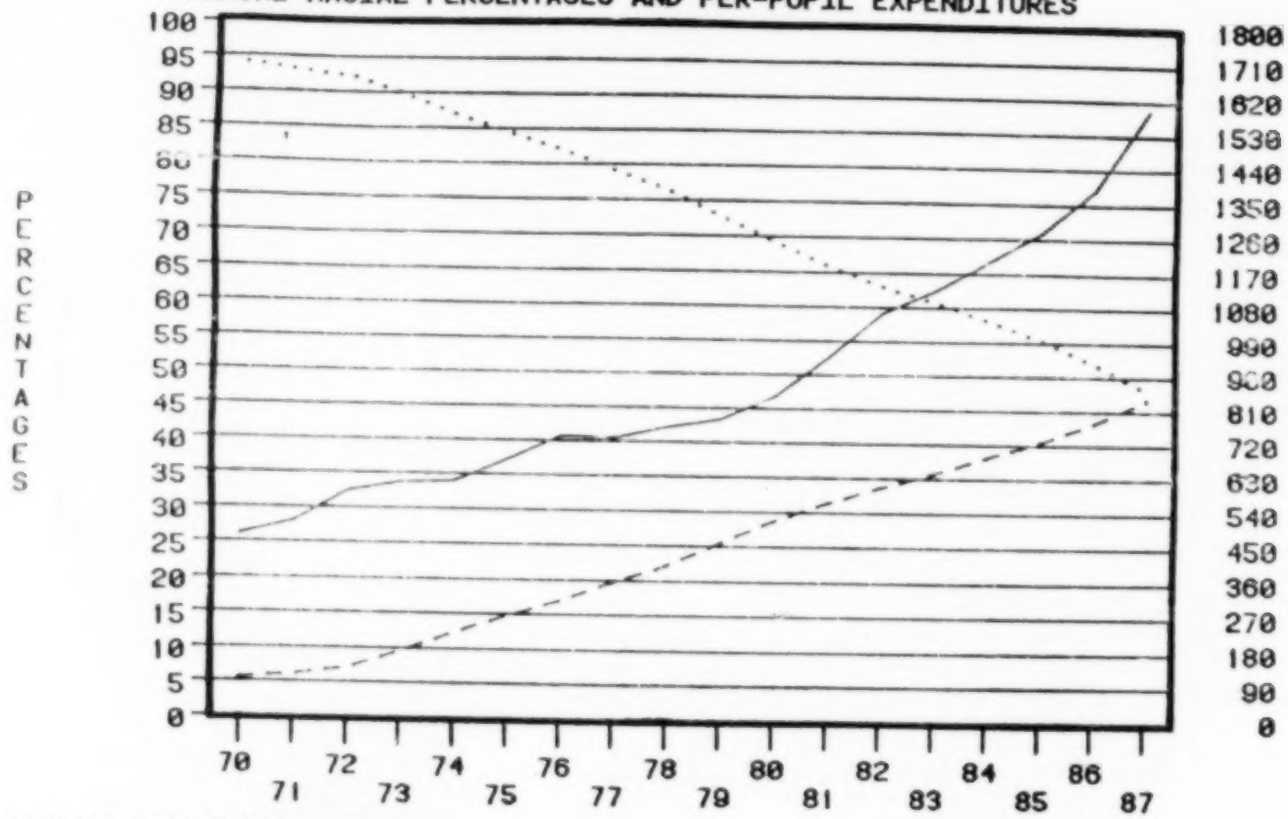
DEKALB COUNTY SCHOOL SYSTEM

RACIAL PERCENTAGES AND PER-PUPIL EXPENDITURES



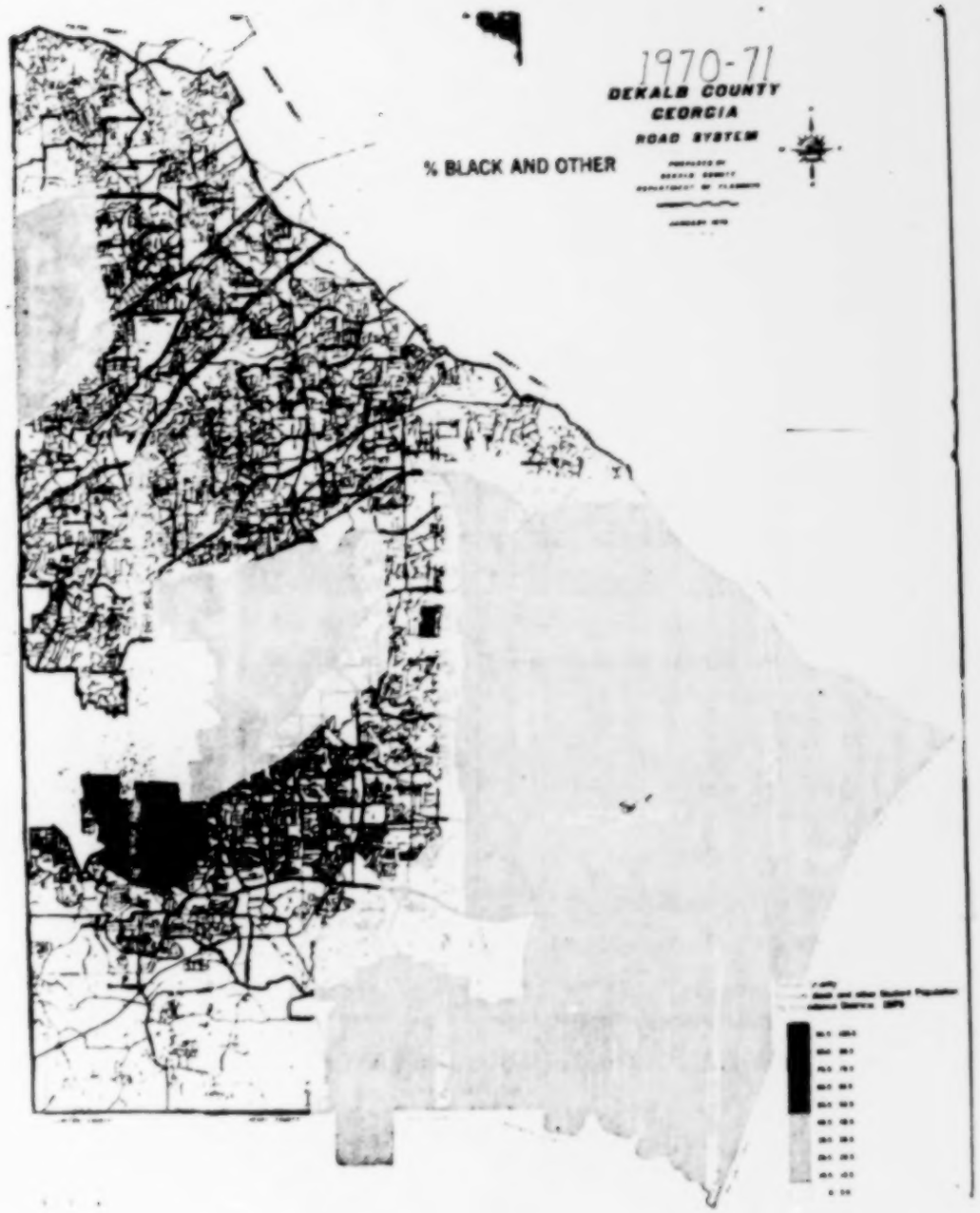
DEKALB COUNTY SCHOOL SYSTEM

ANNUAL RACIAL PERCENTAGES AND PER-PUPIL EXPENDITURES



PER PUPIL EXP ADJUSTED FOR INFLATION

DEFENDANT'S EXHIBIT 222



Supreme Court, U.S.
FILED
MAY 3 1991
OFFICE OF THE CLERK

No. 89-1290

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

ROBERT R. FREEMAN, *et al.*,
Petitioners,

v.

WILLIE EUGENE PITTS, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

JOINT APPENDIX

(Volume II, pp. 431-872)

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Dated: May —, 1991

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PETITION FOR CERTIORARI FILED FEBRUARY 12, 1990
CERTIORARI GRANTED FEBRUARY 19, 1991

TABLE OF CONTENTS

VOLUME I

	Page
Relevant Docket Entries	1
Complaint	41
Answer	49
Order (5/12/69)	61
Order (11/3/76)	71
Order (1/23/77)	96
Order (4/18/77)	98
Order (5/6/77)	101
Order (10/6/77)	104
Order (12/27/77)	113
Order (5/23/78)	117
Order (9/6/78)	127
Order (10/25/78)	132
Pitts v. *Cherry*, 598 F.2d 1005 (5th Cir. 1979)	133
Order (5/8/79)	138
Order (9/8/83)	151
Order (2/22/84)	162
Order (7/11/84)	170
Pitts v. *Freeman*, 755 F.2d 1423 (11th Cir. 1985)	174
Order (10/31/85)	183
Order (11/7/86)	200
Order (6/30/88)	202
Order (8/11/88)	251
Defendant's Exhibit 2	253
Defendant's Exhibit 3	255
Defendant's Exhibit 4	256
Defendant's Exhibit 5	257
Defendant's Exhibit 6	258
Defendant's Exhibit 11	259
Defendant's Exhibit 13	260
Defendant's Exhibit 19	261
Defendant's Exhibit 20	262
Defendant's Exhibit 24	263
Defendant's Exhibit 25	264
Defendant's Exhibit 32	267
Defendant's Exhibit 41	269
Defendant's Exhibit 60	424
Defendant's Exhibit 61	425

TABLE OF CONTENTS—Continued

	Page
Defendant's Exhibit 73	427
Defendant's Exhibit 216	428
Defendant's Exhibit 222	430

VOLUME II

Plaintiff's Exhibit 22	431
Plaintiff's Exhibit 23	438
Plaintiff's Exhibit 24	450
Plaintiff's Exhibit 25	465
Plaintiff's Exhibit 26	473
Plaintiff's Exhibit 28	476
Plaintiff's Exhibit 32	481
Plaintiff's Exhibit 34	483
Plaintiff's Exhibit 40	484
Plaintiff's Exhibit 42	491
Plaintiff's Exhibit 44	493
Plaintiff's Exhibit 45	495
Plaintiff's Exhibit 47	497
Plaintiff's Exhibit 66	501
Plaintiff's Exhibit 94	504
Plaintiff's Exhibit 96	509
Plaintiff's Exhibit 97a	511
Plaintiff's Exhibit 97b	512
Plaintiff's Exhibit 97c	513
Plaintiff's Exhibit 98a	514
Plaintiff's Exhibit 98b	515
Plaintiff's Exhibit 98c	516
Plaintiff's Exhibit 99	517
Plaintiff's Exhibit 100	518
Plaintiff's Exhibit 101a	519
Plaintiff's Exhibit 101b	520
Plaintiff's Exhibit 102a	521
Plaintiff's Exhibit 102b	522
Plaintiff's Exhibit 103a	523
Plaintiff's Exhibit 103b	524
Plaintiff's Exhibit 104	525
Plaintiff's Exhibit 105	526
Plaintiff's Exhibit 106	527

TABLE OF CONTENTS—Continued

	Page
Plaintiff's Exhibit 107a	528
Plaintiff's Exhibit 107b	529
Plaintiff's Exhibit 108a	530
Plaintiff's Exhibit 108b	531
Plaintiff's Exhibit 108c	532
Plaintiff's Exhibit 109a	533
Plaintiff's Exhibit 109b	534
Plaintiff's Exhibit 109c	535
Plaintiff's Exhibit 110	536
Plaintiff's Exhibit 111	537
Plaintiff's Exhibit 113	538
Plaintiff's Exhibit 114	539
Plaintiff's Exhibit 123a	540
Plaintiff's Exhibit 123b	542
Plaintiff's Exhibit 123c	543
Plaintiff's Exhibit 123d	544
Plaintiff's Exhibit 124b	545
Plaintiff's Exhibit 124c	546
Plaintiff's Exhibit 125	547
Plaintiff's Exhibit 128	548
Testimony of Dr. David Armor Trial Transcript, Vol. V, pp. 3-143	552
Opening Statement of Gary Sams Trial Transcript, Vol. I, p. 7	658
Testimony of William Ferguson Simpson Trial Transcript, Vol. I, p. 147	658
Testimony of Franklin Dean Grant Trial Transcript, Vol. I, p. 232	659
Testimony of Bobby Nelson Stephens Trial Transcript, Vol. II, pp. 32-33	660
Testimony of Robert L. Tucker Trial Transcript, Vol. II, pp. 65-69	661
Testimony of Mary Durr Trial Transcript, Vol. II, pp. 156-61	664
Testimony of Wayne Cohen Huey Trial Transcript, Vol. III, p. 144	669
Testimony of Ruel Morrison Trial Transcript, Vol. III, pp. 199-202	669

TABLE OF CONTENTS—Continued

	Page
Testimony of Ernest Lamar Hallford	
Trial Transcript, Vol. III, pp. 217-18	672
Testimony of Vivian McMillan	
Trial Transcript, Vol. IV, pp. 10-16	674
Testimony of Fannie H. Tartt	
Trial Transcript, Vol. IV, pp. 173-76	679
Testimony of Dr. Bill Strain	
Trial Transcript, Vol. V, pp. 175, 207-08, 212-15	682
Testimony of Dr. Robert Freeman	
Trial Transcript, Vol. VI, pp. 61-62, 75-76, 131-33, 154-56	687
Testimony of Phil McGregor	
Trial Transcript, Vol. VII, pp. 4-28	694
Testimony of Marcia Borowski	
Trial Transcript, Vol. VII, pp. 83-84, 91, 93-96, 99-103	711
Testimony of Lila Parker	
Trial Transcript, Vol. VII, pp. 136-41	719
Testimony of Roger Mills	
Trial Transcript, Vol. VII, pp. 190-94, 200-08	723
Testimony of Stephen Parker Cole	
Trial Transcript, Vol. VIII, pp. 8-81	733
Testimony of Robert A. Dentler	
Trial Transcript, Vol. IX, pp. 24-124	
Trial Transcript, Vol. X, pp. 113-122	785
Testimony of Frances Pauley	
Trial Transcript, Vol. X, pp. 147-51, 153	860
Testimony of Melvin Johnson	
Trial Transcript, Vol. XI, pp. 35, 133-34, 137-44	864

PLAINTIFF'S EXHIBIT 22

REPORT OF M-to-M TRANSFERS—October 2, 1978

Name of School	1977-78	1978-79	Total Number
Hooper Alexander	2	0	2
Allgood	0	0	0
Ashford Park	0	0	0
Atherton	0	0	0
Austin	0	0	0
Avondale Elementary	0	6	6
Briarlake	4	6	10
Briar Vista	1	1	2
Brockett	0	0	0
Canby Lane	6	12	18
Murphey Candler	0	0	0
Cedar Grove Elem.	21	35	56
Chapel Hill	2	0	2
Chestnut	0	0	0
Clifton	0	0	0
Columbia Elementary	5	0	5
Dresden	0	0	0
Dunaire	0	0	0
Dunwoody Elementary	0	0	0
Evansdale	1	0	1
Fairington	5	2	7
Fernbank	58	92	150
Flat Shoals	0	0	0
Forrest Hills	4	4	8
Glen Haven	0	3	3
Gresham Park	0	0	0
Hambrick	0	1	1
Hawthorne	2	0	2
Henderson Mill	0	0	0
Hightower	2	0	2
Huntley Hills	0	0	0
Idlewood	0	0	0
Indian Creek	1	0	1
Jolly	0	0	0
Kelley Lake	0	0	0
Kingsley	0	0	0
Knollwood	0	0	0
Laurel Ridge	1	0	1
Livsey	0	0	0
McLendon	0	0	0
Bob Mathis	44	20	64
Meadowview	0	0	0
Medlock	0	0	0

Name of School	1977-78	1978-79	Total Number
Midvale	0	0	0
Midway	11	6	17
Montclair	0	0	0
Montgomery	0	0	0
Nancy Creek	0	0	0
Northwoods	0	0	0
Oakcliff	0	0	0
Oak Grove	1	16	17
Peachcrest	7	1	8
Pleasantdale	0	0	0
Rainbow	29	15	44
Redan Elementary	0	4	4
Rehoboth	0	0	0
Cary Reynolds	0	0	0
Rock Chapel	0	2	2
Rockbridge	0	2	2
Rowland	0	1	1
Sagamore Hills	2	0	2
Shallowford	0	0	0
Sky Haven	0	0	0
Skyland	0	0	0
Smoke Rise	1	0	1
Snapfinger	33	0	33
Leslie J. Steele	0	0	0
Stone Mill	0	0	0
Stone Mountain Elem.	0	0	0
Stoneview	0	0	0
Terry Mill	0	0	0
Tilson	0	0	0
Toney	0	0	0
Tucker Elementary	0	0	0
Vanderlyn	0	0	0
Wadsworth	1	0	1
Warren	0	2	2
Woodridge	0	0	0
Woodward	0	0	0
	259	216	475
HIGH SCHOOLS			
Avondale High	87	66	153
Briarcliff	1	2	3
Cedar Grove High	58	134	192
Chamblee	0	0	0
Clarkston	3	5	8
Columbia High	6	0	6

Name of School	1977-78	1978-79	Total Number
Cross Keys	0	0	0
Druid Hills	32	21	53
Dunwoody High	0	0	0
Gordon	0	0	0
Henderson	0	0	0
Lakeside	1	4	5
Lithonia	5	1	6
Peachtree	0	0	0
Redan High	9	14	23
Sequoyah	1	0	1
Shamrock	1	0	1
Southwest DeKalb	66	199	265
Stone Mountain High	1	1	2
Towers	19	14	33
Tucker High	0	3	3
Walker	0	0	0
	290	464	754
GRAND TOTAL:			1229

HIGH SCHOOLS

	White Students	Black Students	Total Enrollment **	Total M/M Students	% M/M Transported	% Black Residents	Total Black Students
Avondale	835	807	1651	152	9%	40%	49%*
Briarcliff	949	24	1015	3	.3%	2%	2%
Cedar Grove	564	534	1107	182	16%	32%	48%*
Chamblee	1355	91	1461	0	0	6%	6%
Clarkston	1387	95	1507	9	.6%	6%	6%
Columbia	203	1532	1750	6	.3%	87%	87%*
Cross Keys	1212	59	1358	0	0	4%	4%
Druid Hills	778	130	932	47	5%	9%	14%
Dunwoody	2005	4	2017	0	0	.2%	.2%
Gordon	10	1512	1523	0	0	99%	99%
Henderson	1892	3	1914	1	.05%	.1%	.2%
Lakeside	1767	24	1815	4	.2%	1%	1%
Lithonia	937	304	1243	6	.5%	24%	24%
Peachtree	1812	17	1842	0	0	.9%	.9%
Redan	1676	94	1786	23	1%	4%	5%
Sequoyah	1363	10	1412	1	.07%	.6%	.7%
Shamrock	1737	71	1839	0	0	4%	4%
Southwest DeKalb	1398	542	1958	262	13%	14%	28%*
Stone Mountain	1823	55	1899	2	.01%	3%	3%
Towers	1290	364	1671	37	2%	20%	22%
Tucker	1810	27	1847	5	.2%	1%	1%
Walker	131	1492	1628	0	0	92%	92%

* High Schools affected by proposed plan

** Other minority shown only in total enrollment figures

ELEMENTARY SCHOOLS

	White Students	Black Students	Total Enrollment	Total M/M Students	% of M/M Transported	% of Black Residents	Total Black Students
Hooper Alexander	74	450	527	2	.3%	85%	85%*
Allgood	737	0	752	0	0	0	0
Ashford Park	496	26	534	0	0	5%	5%
Atherton	470	33	512	0	0	6%	6%
Austin	699	1	702	0	0	.1%	.1%
Avondale	372	267	657	3	.5%	40%	41%*
Briarlake	408	12	427	6	1.4%	1.4%	3%
Briar Vista	447	18	520	1	.1%	3%	3%
Brockett	530	0	533	0	0	0	0
Canby Lane	383	297	684	18	3%	40%	43%*
Murphey Candler	514	65	580	0	0	12%	12%
Cedar Grove	341	407	754	73	10%	44%	54%*
Chapel Hill	431	298	732	3	.4%	40%	41%*
Chesnut	533	2	540	0	0	.4%	.4%
Clifton	14	547	563	0	0	97%	97%
Columbia	124	643	775	2	.3%	83%	83%*
Dresden	549	12	575	0	0	2%	2%
Dunaire	426	17	460	0	0	4%	4%
Dunwoody	724	0	731	0	0	0	0
Evansdale	428	0	429	0	0	0	0
Fairington	552	77	639	7	1%	11%	12%
Fernbank	555	175	747	134	18%	6%	23%
Flat Shoals	15	753	768	0	0	98%	98%
Forrest Hills	203	104	311	7	2%	31%	33%*

	White Students	Black Students	Total Enrollment	Total M/M Students	% of M/M Transported	% of Black Residents	Total Black Students
Glen Haven	338	64	420	3	.7%	14%	15%
Gresham Park	80	713	793	0	0	90%	90%
Hambrick	579	2	585	1	.15%	.15%	.3%
Hawthorne	496	5	513	1	.2%	.8%	1%
Henderson Mill	405	1	409	0	0	.2%	.2%
Hightower	662	39	719	2	.3%	5%	5%
Huntley Hills	441	37	485	0	0	8%	8%
Idlewood	662	30	703	0	0	4%	4%
Indian Creek	632	125	768	1	.1%	16%	16%
Jolly	607	26	653	0	0	4%	4%
Kelley Lake	8	709	719	0	0	99%	99%
Kingsley	657	0	0	0	0	0	0
Knollwood	92	446	549	0	0	81%	81%
Laurel Ridge	409	12	443	1	.2%	3%	3%
Livsey	407	0	410	0	0	0	0
McLendon	716	98	832	0	0	12%	12%
Bob Mathis	301	258	566	53	10%	36%	46%*
Meadowview	143	400	543	0	0	74%	74%
Medlock	312	81	410	0	0	20%	20%
Midvale	582	1	593	0	0	.2%	.2%
Midway	372	67	444	18	4%	11%	15%
Montclair	296	9	321	0	0	3%	3%
Montgomery	686	87	779	0	0	11%	11%
Nancy Creek	580	6	601	0	0	1%	1%
Northwoods	387	23	425	0	0	5%	5%
Oakcliff	612	12	669	0	0	2%	2%

Oak Grove	448	23	478	14	3%	2%	5%
Peachcrest	277	218	502	8	1%	42%	43%*
Pleasantdale	331	0	336	0	0	0	0
Rainbow	453	299	756	53	7%	33%	40%*
Redan	817	34	860	4	.5%	3%	4%
Rehoboth	384	2	390	0	0	.5%	.5%
Cary Reynolds	472	21	516	0	0	4%	4%
Rock Chapel	412	16	430	2	.5%	3%	4%
Rockbridge	908	3	927	2	.2%	.1%	.3%
Rowland	632	11	654	2	.3%	1.3%	2%
Sagamore Hills	464	6	477	2	.4%	.8%	1%
Shallowford	578	1	579	0	0	.2%	.2%
Sky Haven	36	904	945	0	0	96%	96%
Skyland	488	6	523	0	0	.2%	.2%
Smoke Rise	726	38	776	0	0	5%	5%
Snapfinger	163	670	845	33	4%	75%	79%*
Leslie J. Steele	75	601	677	0	0	89%	89%
Stone Mill	564	7	580	0	0	1%	1%
Stone Mountain	714	80	799	0	0	10%	10%
Stoneview	436	289	725	0	0	40%	40%
Terry Mill	3	626	632	0	0	99%	99%
Tilson	2	705	707	0	0	100%	100%
Toney	14	930	948	0	0	98%	98%
Tucker	464	1	471	0	0	.2%	.2%
Vanderlyn	674	9	687	0	0	1%	1%
Wadsworth	59	466	529	1	.2%	88%	88%*
Warren	385	7	408	0	0	2%	2%
Woodridge	748	11	778	0	0	1%	1%
Woodward	371	42	483	1	.2%	8.3%	9%

* Schools affected by proposed plan

PLAINTIFF'S EXHIBIT 23

M TO M

HIGH SCHOOLS

Avondale	82	Redan	130
Briarcliff	73	Sequoyah	12
Cedar Grove	113	Shamrock	18
Clarkston	7	Southwest DeKalb	173
Columbia	3	Stone Mountain	9
Cross Keys	10	Towers	300
Druid Hills	175	Tucker	9
Henderson	8	Walker	1
Lakeside	49		
Lithonia	30		1,202

ELEMENTARY SCHOOLS

Atherton	12	Montgomery	1
Avondale	42	Northwoods	1
Briarlake	17	Redan	15
Briar Vista	11	Rehoboth	1
Canby Lane	9	Rockbridge	2
Murphy Candler	4	Rock Chapel	2
Cedar Grove	22	Rowland	2
Chapel Hill	2	Sagamore Hills	27
Chesnut	4	Smokerise	5
Columbia	1	Snapfinger	17
Dresden	3	Stone Mill	3
Dunaire	10	Stone Mountain	4
Dunwoody	5	Stone Mountain	4
Evansdale	2	Stoneview	7
Fairington	94	Vanderlyn	4
Fernbank	214	Wadsworth	1
Forrest Hills	19	Warren	4
Glen Haven	26	Woodridge	2
Hawthorne	6	Woodward	3
Henderson Mill	11	Oak Grove	21
Indian Creek	31	Peachcrest	3
Jolly	5	Pleasantdale	2
Laurel Ridge	3	Rainbow	27
Bob Mathis	40		
Medlock	9		807
Midway	47		

1,202
807
2,009

9/16/80

M TO M TRANSFERS

1980-81

SENDING - HIGH SCHOOLS

From	To	Grades 9-12		New 8th Graders	
Avondale		Cross Keys (4) Briarcliff (1)		Towers (3) Druid Hills (2)	
10					
Briarcliff		Avondale (1)			
1					
Cedar Grove		Towers (4) Lakeside (4) Druid Hills (2)		Druid Hills (2) Lakeside (5) Towers (1)	Henderson (1) Lithonia (1) Briarcliff (1)
21					
Columbia		Lakeside (3) Towers (24) 6 Sequoyah (10) Lithonia (3) Shamrock (1)	Henderson (3) Tucker (2) Druid Hills (8) Briarcliff ~~(2)~~ 3 Cross Keys (1)	Lakeside (6) Druid Hills (8) Towers (28) Shamrock (1) Southwest DeKalb ~~(1)~~ 2	Redan (2) Tucker (1) Briarcliff (2) Henderson (2)
-108 40 112					
Gordon		Druid Hills (12) Towers ~~(19)~~ 22 Lakeside (6) Lithonia (4)	Shamrock (3) Briarcliff ~~(13)~~ 17 Tucker (1) Cross Keys (2)	Briarcliff ~~(7)~~ 3 Lakeside (2) Shamrock (4) Southwest DeKalb (4)	Towers ~~(50)~~ 51 Druid Hills ~~(45)~~ 46
~~174~~ 177 185					
Lithonia				Cedar Grove (1)	
1					
Redan		Avondale (1)			
1					
Towers		Avondale ~~(1)~~ 5			
~~1~~ 5					
Walker		Towers (13) 14 Lithonia (1) Henderson (1) Briarcliff (2) 3	Druid Hills (7) 7 Sequoyah (1) Lakeside (1) Shamrock (1)	Lakeside (12) Druid Hills (16) Briarcliff (20) Shamrock (2) Southwest DeKalb (5) Henderson (1)	Cross Keys (2) Towers (25) Lithonia (6) 7 Sequoyah (1)
117 127					
Shamrock		Avondale (1)			
1					

SENDING 1980-81

ELEMENTARY

From	To		7th Graders
Hooper Alexander ~~15~~ 14 15	Midway (5) Briar Vista (1)		Towers (3) Druid Hills (1)
Avondale 3			Towers (2) Druid Hills (1)
Canby Lane ~~9~~ 10	Sagamore Hills (1) Jolly (1) Henderson Mill (2) Glen Haven (1)	Midway (1) Indian Creek (1) Fernbank (1) Rowland (1) Smoke [illegible] (1)	
Cedar Grove 11	Briarlake (1) Midway (1)	Fairington (2)	Druid Hills (3) Lakeside (4)
Chapel Hill 14	Evansdale (2) Sagamore Hills (7)	Montgomery (1) Fairington (1)	Henderson (1) Lakeside (1) Towers (1)
Clifton 30	Vanderlyn (2) Dunwoody (2) Indian Creek (1) Fairington (5)	Stoneview (1) Sagamore Hills (1) Jolly (1) Briar Vista (1)	Briarcliff (1) Lithonia (1) Druid Hills (4) Towers (9) Lakeside (1)
Columbia ~~33~~ 34	Sagamore Hills (3) Dunwoody (1) Midway (3) Indian Creek (1) Henderson Mill (1)	Fairington (8) Briarlake (4) Briar Vista (2) Atherton ~~(2)~~ 3 Fernbank (1)	Lakeside (3) Shamrock (1) Southwest DeKalb (1) Druid Hills (1) Briarcliff (1)
Flat Shoals ~~35~~ ~~36~~ 39	Sagamore Hills (3) Oak Grove (1) Avondale (1) 3 Henderson Mill (2) [illegible] (1)	Glen Haven (1) Fairington ~~(3)~~ 4 5 Briarlake (1)	Lakeside (2) Druid Hills (1) Briarcliff (5) Towers (7) Lithonia (3) Shamrock (1) Southwest DeKalb (4)

Gresham Park ~~41~~ 4-1-44	Smoke Rise (2) Briar Vista (1) Fairington (4) Oak Grove (1) [illegible] (1)	Midway (2) Indian Creek (1) Chesnut (1) Stone Mountain (1)	Southwest DeKalb (1) Towers (~~7~~ 8) Cross Keys (2) Druid Hills (4) Briarcliff (13)
Kelley Lake ~~36~~ ~~37~~ 40	Sagamore Hills (3) Dunaire (2) Fairington (6) 7 [illegible] (1)	Indian Creek (3) Avondale (4) Glen Haven (1)	Briarcliff (5) Towers (9) Southwest DeKalb (3)
Knollwood 19	Avondale (7) Midway (1) Indian Creek (2) Fairington (3)	Laurel Ridge (1) Medlock (1) Atherton (1)	Towers (2) Druid Hills (1)
Bob Mathis 8	Sagamore Hills (2) Forrest Hills (1)	Fairington (2) Stone Mountain (1)	Druid Hills (1) Southwest DeKalb (1)
Meadowview ~~19~~ ~~20~~ 21	Forrest Hills (1) Glen Haven (2) Stoneview (1) [illegible] (2)		Druid Hills (5) Lakeside (6) Sequoyah (1) Briarcliff (1) Lithonia (1) Towers (1)
Peachcrest ~~5~~ ~~7~~ 11	Fairington (2) Glen Haven (2) 4 [illegible] (4)		Lakeside (1)
Rainbow ~~12~~ ~~13~~ 15	Sagamore Hills (~~5~~ 6) Fairington (6) 7 [illegible] (1)	Fernbank (1)	
Sky Haven ~~21~~ 22	Sagamore Hills (1) Indian Creek (2) Fernbank (1)	Fairington (~~5~~ 6) Briarlake (1)	Lithonia (2) Towers (2) Lakeside (4) Shamrock (1) Druid Hills (2)
Snapfinger ~~21~~ 23	Warren (1) Oak Grove (1) Glen Haven (2) [illegible] (1)	Fairington (2) SmokeRise (1)	Briarcliff (1) Towers (10) Tucker (1) Lakeside (1) Druid Hills (1) Cedar Grove (1)

Stoneview			Cedar Grove (1).
1			
erry Mill	Dresden (1)	Briar Vista (1)	Towers (21)
	Woodward (2)	Glen Haven (4)	Lithonia (1)
47	Forrest Hills (2)	Oak Grove (1)	Druid Hills (8)
	Fairington (2)	Atherton (3)	Briarcliff (1)
L.J.Steele	Avondale (6)	Fairington (6)	Towers (8) Lakeside (1)
	Oak Grove (1)	Indian Creek (1)	Druid Hills (21) ? ?
53	Fernbank(4)	Dunwoody (1)	Southwest DeKalb (2)
			Shamrock (2)
Tilson	Atherton (1)	Fairington ~~(2)~~ 4	Towers (17)
	Avondale (1)	Dunaire (2)	Briarcliff (2)
~~46~~ ~~47~~	Midway (2)	Forrest Hills (1)	Lithonia (1)
50 ~~49~~	Woodward (1)	Briarlake (2)	Druid Hills (11)
	Fernbank (1)	Briarwood (1)	Shamrock (2)
	[illegible] (1)		
Toney	Henderson Mill (3)	Chesnut (2)	Druid Hills (5)
	Fairington (6)	Midway (2)	Towers (11)
~~47~~ 49	Glen Haven (6)	Avondale (8)	Lakeside (1)
	Forrest Hills (2)	Dresden (1)	[illegible] (1)
Wadsworth	Medlock (1)	Dunaire (4)	Henderson (2)
	Fairington (4)	Avondale (1)	Towers (3)
19	Glen Haven (1)	Atherton (1)	Redan (2)
Fairington			Lithonia (1)
1			

DEKALB COUNTY SCHOOLS
ELEMENTARY M TO M 1980-1981

TRANSPORTATION DEPARTMENT

LIST OF SENDING SCHOOLS AND THE RECEIVING SCHOOL WHICH THEY SERVE.

SENDING SCHOOLS	RECEIVING SCHOOLS
1. Hooper Alexander Elementary	Avondale Elementary Briarlake Elementary Fernbank Elementary Indian Creek Elementary Laurel Ridge Elementary Midway Elementary Oak Grove Elementary Sagamore Hills Elementary Forrest Hills Elementary
2. Canby Lane Elementary	Chestnut Elementary Fairington Elementary Henderson Mill Elementary Indian Creek Elementary Jolly Elementary Rowland Elementary Midway Elementary Fernbank Elementary
3. Cedar Grove Elementary	Fairington Elementary Bob Mathis Elementary
4. Chapel Hill Elementary	Fernbank Elementary Evansdale Elementary Sagamore Hills Elementary Fairington Elementary
5. Clifton Elementary	Briar Vista Elementary Cedar Grove Elementary Dunwoody Elementary Fairington Elementary Redan Elementary Forrest Hills Elementary Fernbank Elementary Jolly Elementary Bob Mathis Elementary Northwoods Elementary Glen Haven Elementary Vanderlyn Elementary Sagamore Hills Elementary

SENDING SCHOOLS	RECEIVING SCHOOLS
6. Columbia Elementary	Atherton Elementary Avondale Elementary Briarlake Elementary Briar Vista Elementary Dunwoody Elementary Fairington Elementary Fernbank Elementary Indian Creek Elementary Bob Mathis Elementary Midway Elementary Oak Grove Elementary Rainbow Elementary Redan Elementary Sagamore Hills Elementary Stone Mountain Elementary Wadsworth Elementary
7. Flat Shoals Elementary	Briarlake Elementary Cedar Grove Elementary Dresden Elementary Fairington Elementary Fernbank Elementary Glen Haven Elementary Henderson Mill Elementary Bob Mathis Elementary Midway Elementary Oak Grove Elementary Rainbow Elementary Sagamore Hills Elementary
8. Gresham Park Elementary	Atherton Elementary Avondale Elementary Briar Vista Elementary Fairington Elementary Fernbank Elementary Indian Creek Elementary Bob Mathis Elementary Medlock Elementary Oak Grove Elementary Rainbow Elementary Smoke Rise Elementary Stone Mountain Elementary Midway Elementary Sagamore Hills Elementary Cedar Grove Elementary
9. Kelly Lake Elementary	Avondale Elementary Murphy Candler Elementary Dunaire Elementary Fairington Elementary

SENDING SCHOOLS	RECEIVING SCHOOLS
9. Kelly Lake Elementary—Con't	Fernbank Elementary Glen Haven Elementary Indian Creek Elementary Bob Mathis Elementary Peachcrest Elementary Redan Elementary Sagamore Hills Elementary Stoneview Elementary Briarlake Elementary Snapfinger Elementary Forrest Hills Elementary
10. Knollwood Elementary	Laurel Ridge Elementary Atherton Elementary Avondale Elementary Dunaire Elementary Fairington Elementary Fernbank Elementary Hawthorne Elementary Bob Mathis Elementary Medlock Elementary Midway Elementary Rainbow Elementary Stone Mill Elementary Woodridge Elementary
11. Bob Mathis Elementary	Stone Mountain Elementary Rehoboth Elementary Fairington Elementary Sagamore Hills Elementary Forrest Hills Elementary Midway Elementary
12. Meadowview Elementary	Cedar Grove Elementary Fernbank Elementary Glen Haven Elementary Hawthorne Elementary Bob Mathis Elementary Stoneview Elementary Fairington Elementary Atherton Elementary Indian Creek Elementary Forrest Hills Elementary
13. Peachcrest Elementary	Glen Haven Elementary Snapfinger Elementary Fairington Elementary
14. Rainbow Elementary	Fairington Elementary Fernbank Elementary Bob Mathis Elementary

SENDING SCHOOLS	RECEIVING SCHOOLS
14. Rainbow Elementary—Cont'd	Pleasantdale Elementary Redan Elementary Snapfinger Elementary Sagamore Hills Elementary
15. Skyhaven Elementary	Avondale Elementary Briarlake Elementary Cedar Grove Elementary Fairington Elementary Indian Creek Elementary Bob Mathis Elementary Oak Grove Elementary Sagamore Hills Elementary
16. Snapfinger Elementary	Briarlake Elementary Fairington Elementary Indian Creek Elementary Bob Mathis Elementary Oak Grove Elementary Smoke Rise Elementary Warren Elementary Forrest Hills Elementary
17. L. J. Steele Elementary	Avondale Elementary Briar Vista Elementary Cedar Grove Elementary Dunwoody Elementary Fernbank Elementary Indian Creek Elementary Bob Mathis Elementary Medlock Elementary Oak Grove Elementary Rainbow Elementary Fairington Elementary
18. Terry Mill Elementary	Atherton Elementary Avondale Elementary Briar Vista Elementary Canby Lane Elementary Cedar Grove Elementary Dresden Elementary Fairington Elementary Fernbank Elementary Glen Haven Elementary Indian Creek Elementary Bob Mathis Elementary Midway Elementary Oak Grove Elementary Redan Elementary Rockbridge Elementary

SENDING SCHOOLS	RECEIVING SCHOOLS
18. Terry Mill Elementary—Cont'd	Snapfinger Elementary Woodward Elementary Cedar Grove Elementary
19. Tilson Elementary	Avondale Elementary Briarlake Elementary Briar Vista Elementary Cedar Grove Elementary Canby Lane Elementary Dunaire Elementary Fairington Elementary Fernbank Elementary Jolly Elementary Bob Mathis Elementary Medlock Elementary Midway Elementary Redan Elementary
20. Toney Elementary	Avondale Elementary Canby Lane Elementary Chestnut Elementary Dresden Elementary Fairington Elementary Fernbank Elementary Glen Haven Elementary Indian Creek Elementary Bob Mathis Elementary Medlock Elementary Midway Elementary Peachcrest Elementary Rainbow Elementary Redan Elementary Snapfinger Elementary Warren Elementary Stoneview Elementary Forrest Hills Elementary
21. Wadsworth Elementary	Atherton Elementary Canby Lane Elementary Chapel Hill Elementary Dunaire Elementary Fairington Elementary Fernbank Elementary Glen Haven Elementary Hawthorne Elementary Henderson Mill Elementary Snapfinger Elementary Rainbow Elementary Peachcrest Elementary Medlock Elementary

PLAINTIFF'S EXHIBIT 24

9/27/82 **M TO M TRANSFERS**

1982-1983

RECEIVING SCHOOLS	TOTAL
ATHERTON ELEMENTARY	28
AVONDALE HIGH	2
BRIARCLIFF HIGH	143
BRIARLAKE ELEMENTARY	14
BRIAR VISTA ELEMENTARY	15
CANBY LANE ELEMENTARY	1
CLARKSTON HIGH	28
CROSS KEYS HIGH	21
DRESDEN ELEMENTARY	3
DRUID HILLS HIGH	72
DUNAIRE ELEMENTARY	20
DUNWOODY ELEMENTARY	6
FAIRINGTON ELEMENTARY	61
FERNBANK ELEMENTARY	84
HAMBRICK ELEMENTARY	3
HENDERSON HIGH	18
HENDERSON MILL ELEMENTARY	26
IDLEWOOD ELEMENTARY	3
INDIAN CREEK ELEMENTARY	25
JOLLY ELEMENTARY	8
LITHONIA HIGH	119
LAKESIDE HIGH	174
MAINSTREET ELEMENTARY	1
McLENDON ELEMENTARY	1
MEDLOCK ELEMENTARY	13
MIDWAY ELEMENTARY	31
MONTCLAIR ELEMENTARY	4
NANCY CREEK ELEMENTARY	2
NORTHWOODS ELEMENTARY	1

RECEIVING SCHOOLS	TOTAL
OAKCLIFF ELEMENTARY	2
OAK GROVE ELEMENTARY	9
PEACHTREE HIGH	1
PLEASANTDALE ELEMETARY	1
REHOBOTH ELEMENTARY	1
REDAN ELEMENTARY	2
REDAN HIGH	7
CARY REYNOLDS ELEMENTARY	1
ROWLAND ELEMENTARY	21
SAGAMORE HILLS ELEMENTARY	30
SEQUOYAH	7
SHALLOWFORD ELEMENTARY	1
SHAMROCK HIGH	34
SKYLAND ELEMENTARY	1
SMOKE RISE ELEMENTARY	15
STONE MOUNTAIN ELEMENTARY	9
STONE MOUNTAIN HIGH	5
STONEVIEW ELEMENTARY	3
TOWERS HIGH	4
TUCKER HIGH	12
VANDERLYN ELEMENTARY	1
WARREN ELEMENTARY	1
WOODWARD ELEMENTARY	1
TOTAL	1,096

September 27, 1982

1982-83 M TO M TRANSFERS

Receiving Schools	K	1	2	3	4	5	6	7	8	9	10	11	12	Total
Avondale High											1	1		2
Atherton Elementary	9	4	3	3	3	3	3							28
Briarcliff High								76	20	21	22		4	143
Briarlake Elementary	3	2	1	1	2	5								14
Briar Vista Elementary	3	2	1	1	1	5	2							15
Canby Lane Elementary	1													1
Clarkston High								23	2	2	1			28
Cross Keys High								9	4	4	4			21
Dresden Elementary	1			1		1								3
Druid Hills High								69	1	1	1			72
Dunaire Elementary	3	6	1	3	3	4								20
Dunwoody Elementary	3	1	2											6
Fairington Elementary	10	8	5	5	8	14	7	3						61
Fernbank Elementary	19	15	8	10	12	12	7	1						84
Hambrick Elementary	1		1			1								3
Henderson High								12	2	1	3			18
Hendersen Mill Elem.	5	2	4	5	2	4	3	2						27
Idlewood Elementary			1		1	1								3
Indian Creek Elem.	4	2	5	2	3	4	4	1						25
Jolly Elementary	1		1	1	2	2		1						8
Lakeside High								115	19	21	11	8		174
Lithonia High								76	14	16	11	2		119
Mainstreet Elementary	1													1
McLendon Elementary							1							1

Medlock Elementary	1	4	2	1	1	2	2							13
Midway Elementary	2	3	2	3	6	10	5							31
Montclair Elementary			2		1			1						4
Nancy Creek Elementary			1			1								2
Northwoods Elementary								1						1
Oakcliff Elementary		1			1									2
Oak Grove Elementary	3	1	1		1	2	1							9
Peachtree High												1		1
Pleasantdale Elem.								1						1
Rehoboth Elementary			1											1
Redan Elementary	2													2
Redan High								6		1				7
Cary Reynolds Elem.							1							1
Rowland Elementary	4	3	3		4	3	3	1						21
Sagamore Hills Elem.	7	3	2	6	3	6	2	1						30
Sequoyah High								4		2	1			7
Shallowford Elementary				1										1
Shamrock High								19	4	3	7	1		34
Smoke Rise Elementary		1	5		2	6	1							15
Stone Mountain Elem.	2		1	1	3		2							9
Stone Mountain High								4	1					5
Stoneview Elementary		1			1		1							3
Towers High								3	1					4
Tucker High								6	1	2	3			12
Vanderlyn Elementary						1								1
Warren Elementary	1													1
Woodward Elementary							1							1
TOTALS	86	59	54	44	60	86	46	436	69	74	65	13	4	1,096

September 27, 1982

1982-83 M TO M TRANSFERS

Sending Schools	K	1	2	3	4	5	6	7	8	9	10	11	12	Total
Hooper Alexander Elem.	4	1	1	1	2	3	1	3						16
Atherton Elementary	1							1						2
Avondale Elementary			2	1	1	1	1	7						13
Avondale High									6	2	2			10
Briarlake Elementary								1						1
Briar Vista Elementary								1						1
Canby Lane Elementary	2	3	1		5	2	2	6						21
Cedar Grove Elementary	2			3	1	3	1	7						17
Cedar Grove High									10	15	11	1		37
Chapel Hill Elementary	9	5	9	2	1	8	6	5						45
Chestnut Elementary								2						2
Clarkston High											1			1
Clifton Elementary	6	3	1	2	5	5	3	26						51
Columbia Elementary	1	5	10	2	4	12	2	18						54
Columbia High									9	14	12	2	2	39
Dunaire Elementary								2						2
Evansdale Elementary						1								1
Fairington Elementary								11						11
Fernbank Elementary								12						12
Flat Shoals Elem.	5	4	1	2	3	1	1	36						53
Forrest Hills Elem.								3						3
Glen Haven Elem.	2							2						4
Gordon High									18	19	17	4	1	59
Gresham Park Elementary	6	6	1	6	7	12	5	40						83

454

Indian Creek Elementary							1	6						7
Kelley Lake Elem.	4	3	1	1		5	1	21						36
Knollwood Elementary	4	1	7	2	3		3	4						24
Laurel Ridge Elem.								1						1
Mainstreet Elementary								4						4
Bob Mathis Elementary	1			1	1	1	1	6						11
McLendon Elementary	1													1
Meadowview Elementary	5	1		1	3	1		13						24
Medlock Elementary							2	6						8
Midway Elementary		1						3						4
Oak Grove Elementary								3						3
Peachcrest Elementary			1		2	1	1	2						7
Rainbow Elementary	2	4	1	3	3	3	1	5						22
Redan Elementary								3						3
Cary Reynolds Elem.								1						1
Rockbridge Elem.								1						1
Rowland Elementary								1						1
Sagamore Hills Elem.								4						4
Sky Haven Elementary	4	2		1	2	4	2	25						40
Skyland Elementary	1													1
Smoke Rise Elementary								1						1
Snapfinger Elementary	2	4	4		1	1	1	21						34
Southwest DeKalb High									8	4	6	1	1	20
Leslie J. Steele Elem.	3	1	1	2		4		17						28
Stone Mill Elementary								1						1
Stone Mountain Elem.								1						1
Stoneview Elementary								1						1
Terry Mill Elementary	7	2	7	3	6	3	4	17						49
Tilson Elementary	4	4	1	2	1	4	2	44						62

455

Sending Schools	K	1	2	3	4	5	6	7	8	9	10	11	12	Total
Toney Elementary	4	6	2	5	6	5	4	24	6	3	5	1		56
Towers High														15
Tucker Elementary								1						1
Wadsworth Elementary	6	3	4	4	3	6	1	14	12	17	10	3		41
Walker High														42
Woodward Elementary								2						2
TOTALS	86	59	54	44	60	86	46	436	69	74	65	13	4	1,096

DEKALB SCHOOL SYSTEM—MAJORITY TO MINORITY REPORT FOR THE 1982-1983 SCHOOL YEAR

SENDING SCHOOLS

Hooper Alexander Elementary

Briarlake	2
Druid Hills	1
Clarkston	1
Fairington	2
Fernbank	2
Henderson M.	1
Indian C.	2
Medlock	2
OakGrove	1
	14

Avondale Elementary

Druid Hills	1
Clarkston	2
Henderson Hi	1
Indian C.	3
Lithonia	1
Midway	2
Shamrock	1
	11

Avondale High

Cross Keys	6
Clarkston	1
Lakeside	1
Lithonia	1
Shamrock	2
	11

Briarlake

Lakeside	1

Briar Vista

Briarcliff	1

Canby Lane

Briarcliff	1
D. Hills	1
Fairington	7
Lakeside	2
Fernbank	1
Lithonia	1
Rowland	9
	22

Atherton

Redan E.	1
Sequoyah	1
	2

Cedar Grove Elem.

Druid Hills	2
Clarkston	1
Dunaire	1
Fairington	3
Henderson M.	
Lakeside	4
Lithonia	1
Henderson H.	*1*
	16

Cedar Grove High

Briarcliff	1
Henderson	2
Lakeside	13
Lithonia	7
Sequoyah	1
Shamrock	7
Tucker Hi	2
	33

Chapel Hill Elem.

Stoneview	2
D. Hills	1
Fairington	6
Fernbank	1
Tucker	1
Henderson M.	9
Idlewood	1
Jolly	1
Lakeside	1
Lithonia	1
Sagamore	7
Shallowford	1
Smokerise	2
Rowland	4
	38

Columbia Elem.
- Shamrock 2
- Smokerise 10
- St. Mountain 1
- Atherton 1
- Medlock 1
- Briarcliff 2
- Briarlake 4
- BriarVista 2
- Hambrick 1
- D. Hills 5
- Clarkston 1
- Dunaire 3
- Indian C. 1
- Fairington 4
- Fernbank 5
- Lakeside 5
- Oakgrove 3
- Cross Keys 1

52

Clifton Elem.
- Atherton 1
- Briarcliff 1
- Briar Vista 1
- D. Hills 4
- Lithonia 2
- Fairington 1
- Fernbank 9
- Jolly 3
- Lakeside 13
- Oakgrove 1
- Medlock 1
- Redan E. 1
- Redan H. 1
- Sagamore 2

41

Columbia High
- Briarcliff 9
- Cross Keys 1
- Clarkston 4
- Lakeside 6
- Lithonia 9
- Towers 1
- Tucker 1

31

Dunaire Elem.
- Clarkston 2

Fairington Elem.
- Clarkston 1
- Lithonia 6

7

Fernbank Elem.
- D. Hills *8*
- Lakeside 2
- Shamrock 1

11

Flat Shoals Elem.
- Lithonia 21
- Briarcliff 3
- Cross Keys 1
- D. Hills 3
- Dunaire 3
- Fairington 1
- Henderson 3
- Jolly 1
- Lakeside 6
- Redan Hi 1
- Sagamore 4
- Shamrock 1
- St. Mountain 2

50

Forrest Hills Elem.
- Shamrock 2
- Lithonia 1

3

Glen Haven Elem.
- Atherton 1
- D. Hills 1
- Fernbank 1
- Lithonia 1

4

Gordon High
- Briarcliff 21
- Shamrock 1
- Tucker 3
- Cross Keys 3
- Henderson 1
- Lakeside 13
- Lithonia 10
- Sequoyah 2
- St. Mountain 1

55

Gresham Park Elem.
- St. Mount. 1
- Woodward 1
- Shamrock 1
- Tucker 1
- Atherton 3
- Briarcliff 20
- BriarVista 3
- D. Hills 3
- Lakeside 10
- Dunaire 2
- Jolly 2
- Redan Hi 2
- Fairington 11
- Fernbank 9
- Sagamore 6
- Nancy Creek 1
- Indian C. 4
- Midway 3
- Lithonia 3
- Sequoyah 1

87

Indian Creek Elem.
- Cross Keys 1
- Clarkston 5

6

Kelley Lake Elem.
- Lithonia 9
- Atherton 2
- Briarcliff 5
- Briarlake 1
- D. Hills 1
- Lakeside 3
- Idlewood 1
- Clarkston 1
- Fairington 3
- Fernbank 5
- Indian C. 3
- Sagamore 1
- Tucker E. 1
- Tucker Hi 1

37

Knollwood Elem.
- St. Mountain 1
- Atherton 1
- Briarcliff 2
- Clarkston 1
- Dunaire 1
- Fernbank 6
- Lithonia 1
- Midway 5
- Nancy C. 1
- Oakcliff 1
- Oakgrove 1
- Smokerise 1
- Fairington 1

23

Mainstreet
- Henderson Hi 1
- Lakeside 3

4

Bob Mathis
- Atherton 1
- Briarcliff 1
- Fernbank 1
- Lakeside 3
- Montclair 1
- Sagamore 1
- St. Mountain 1

9

McLendon Elem.
- Canby Lane 1

Meadowview Elem.
- Atherton 2
- BriarVista 1
- D. Hills 1
- Dunaire 1
- Dunwoody 1
- Fairington 1
- Fernbank 3
- Lakeside 11

21

Medlock Elem.
- D. Hills 4
- Clarkston 1
- Lithonia 1
- Shamrock 1

7

Midway Elem.	
Braircliff	1
Lithonia	2
	3
Oakgrove Elem.	
Lakeside	3
Peachcrest Elem.	
Fernbank	1
Lithonia	2
Midway	3
	6
Rainbow Elem.	
Briarlake	1
Cross Keys	1
Dunaire	4
Fernbank	5
Henderson Hi	2
Idlewood	2
Lakeside	1
Sagamore	3
Shamrock	1
	20
Redan Elem.	
Briarcliff	2
Redan High	
Avondale	1
Lithonia	1
	2
Cary Reynolds Elem.	
Cary Reynolds	1
Rockbridge Elem.	
St. Mountain	1
Sagamore Elem.	
Briarcliff	1
Lakeside	2
Lithonia	1
	4
Sky Haven Elem.	
Briarcliff	6
Dresden	1
D. Hills	1
Fairington	8
Fernbank	3
Henderson	1
Lakeside	11
Lithonia	2
Redan	1
Medlock	1
Sequoyah	1
	36
Snapfinger Elem.	
Briarcliff	6
Briarlake	1
Clarkston	1
Dunaire	2
Dunwoody	1
Lakeside	9
Fernbank	2
Henderson Hi	1
Indian C.	1
Rehoboth	1
Shamrock	1
Towers	2
Sagamore	2
Oakgrove	1
Rowland	1
	32
Southwest DeKalb High	
Briarcliff	4
D. Hills	1
Henderson	1
Lakeside	2
Lithonia	4
Redan Hi	1
Shamrock	2
St. Mountain	1
	16
Leslie J. Steele Elem.	
Shamrock	1
Atherton	1
Briarcliff	2
D. Hills	3
Cross Keys	1
Clarkston	1
Fairington	1
Fernbank	4
Indian C.	2
Lakeside	8
Medlock	1
Midway	2
	27

Stone Mill Elem.	
St. Mountain	1
Stoneview Elem.	
Lithonia	1
Terry Mill Elem.	
St. Mountain	2
Atherton	3
Briarcliff	7
BriarVista	1
D. Hills	3
Dunwoody	3
Lakeside	4
Fairington	2
Fernbank	13
Clarkston	1
Hambrick	1
Indian C.	1
Montclair	1
Lithonia	2
Midway	2
Shamrock	1
	47
Tilson Elem.	
Midway	5
Towers	1
Tucker	1
Atherton	1
Briarcliff	13
Cross Keys	2
D. Hills	12
Lithonia	7
Clarkston	4
Dunaire	1
Fairington	2
Fernbank	3
Medlock	1
Lakeside	3
Shamrock	1
	57
Toney Elem.	
Shamrock	1
St. Mountain	1
Stoneview	1
Tucker Hi	1
Oakgrove	1
Sagamore	1
Briarcliff	2
BriarVista	4
D. Hills	11
Dunaire	2
Rowland	1
Fairington	3
Fernbank	5
Henderson Hi	5
Henderson M.	2
Indian C.	3
Medlock	1
Lakeside	4
Mainstreet	1
Midway	4
	54
Towers High	
Shamrock	3
Briarcliff	1
Henderson	1
Lakeside	2
Lithonia	7
	14
Tucker Elem.	
Tucker Hi	1
Wadsworth Elem.	
Atherton	*10*
Briarlake	2
BriarVista	2
D. Hills	4
Fairington	7
Fernbank	4
Lakeside	4
Lithonia	2
Midway	3
Cary Reynolds	1
Sequoyah	1
Shamrock	2
Medlock	*2*
	44
Walker High	
Briarcliff	15
Cross Keys	1
Henderson	1
Lakeside	12
Lithonia	7
	36
Woodward	
Cross Keys	1
TOTAL	*1009*

May 7, 1982

1982-83 M TO M TRANSFERS

Receiving or Following School	K	1	2	3	4	5	6	7	8	9	10	11	12	Total
Avondale High												1		1
Atherton Elementary	9	4	1	3	3	3	3							26
Briarcliff High								73	13	17	18		1	122
Briarlake Elementary	3	2	1	1	2	5								14
Briar Vista Elementary	3	2	1	1	1	3	2							13
Canby Lane Elementary	1													1
Clarkston High								22	2	2	1			27
Cross Keys High								9	4	3	3			19
Dresden Elementary	1													1
Druid Hills High								67	1					68
Dunaire Elementary	3	6	1	3	3	4								20
Dunwoody Elementary	3	1	1											5
Fairington Elementary	10	8	4	4	7	13	6	1						53
Fernbank Elementary	19	15	8	10	12	12	7							83
Hambrick Elementary	1		1											2
Henderson High								11	2	1	3			17
Henderson Mill Elem.	5	1	3	4	1	2	2							18
Idlewood Elementary			1		1	1								3
Indian Creek Elem.	3	2	4	2	3	4	3							21
Jolly Elementary	1		1	1	2	2								7
Lakeside High								110	16	20	9	6		161
Lithonia High								72	13	12	11			108
Mainstreet Elem.	1													1

462

Medlock Elementary		3	2	1	1	1								8
Midway Elementary	2	3	2	3	5	10	4							29
Montclair Elementary			2		1			1						4
Nancy Creek Elem.			1											1
Oakcliff Elementary					1									1
Oak Grove Elementary	3	1	1		1	2	1							9
Rehoboth Elementary			1											1
Redan Elementary	2													2
Redan High								6		1				7
Cary Reynolds Elem.							1							1
Rowland Elementary	3	2	2		3	3	2							15
Sagamore Hills Elem.	7	2	2	6	3	5	2							27
Sequoyah High								3		2	1			6
Shallowford Elementary				1										1
Shamrock High								19	4	2	6	1		32
Smoke Rise Elementary			5		2	5	1							13
Stone Mountain Elem.	2		1	1	3		2							9
Stone Mountain High								4	1					5
Stoneview Elementary		1			1		1							3
Towers High								3	1					4
Tucker High								6	1	2	3			12
Woodward Elementary							1							1
TOTALS	82	53	46	41	56	75	38	408	58	62	55	8	1	982

463

Supplementary

June 4, 1982

1982-83 M TO M TRANSFERS

Receiving Schools	K	1	2	3	4	5	6	7	8	9	10	11	12	Total
Atherton Elem.		1	1											
Midway Elem.					1		1							
Nancy Creek Elem.						1								
Warren Elem.	1													
Briarcliff High								2	1		1			
Clarkston High								1						
Druid Hills High								2						
Lakeside High								2	1			1		
Lithonia High								4		1				
Fairington Elem.			1											
Sequoyah High								1						
Medlock							2							
Henderson High								1						
SUPPLEMENTARY TOTAL				27										
				982										
GRAND TOTAL				1009										

465

PLAINTIFF'S EXHIBIT 25

M-TO-M
MAJORITY
TO
MINORITY
1983-1984

TRANSFER
REGULATIONS
FOR
DEKALB
COUNTY
SCHOOLS

M-to-M PROGRAM?

The majority-to-minority transfer program was created by the courts as a viable tool for furthering integration. The program has been available to DeKalb County School System students for a number of years. Each DeKalb County School System student, regardless of race, has the right to participate according to his/her individual choice.

Students and their parents are encouraged to discuss the program so that the students may participate if they choose to do so.

WHAT IS M-to-M TRANSFER?

Any student may transfer from a school where the student's race is in the majority to another school within the DeKalb County School System where his/her race is in the minority.

HOW ABOUT SPACE FOR TRANSFEREES?

Receiving schools must have available space for transferees. In no instance shall a transferee displace a student previously enrolled in the receiving school.

HOW DO STUDENTS TRANSFER?

M-to-M transfer forms are available at the student's neighborhood school for the 1983-84 school year. The student's parent(s) or guardian(s) must complete and return the form to the neighborhood school on or before May 1, 1983. Upon approval of a majority-to-minority transfer, the school principal will provide the student with a copy of the form which must be presented to the receiving school by the student on his/her registration day.

HOW OFTEN MAY STUDENTS TRANSFER?

Any student may exercise a majority-to-minority transfer once during the student's elementary career and

once during the secondary school career. Once a transfer is effected, the transferee need not reapply for the transfer each year after his/her initial transfer.

If the student's race becomes a majority in the receiving school, he/she may

- remain at the receiving school
- return to his/her neighborhood school
- transfer to another school in which his/her race does not comprise more than the majority of the student body.

STUDENTS WHO MOVE?

Eligible students who move into the school system may transfer under M-to-M at the time of their enrollment.

SPECIAL EDUCATION AND TRANSFERS?

When a student requests an M-to-M transfer and is in need of special education services, the principal in his/her neighborhood school will verify with the Dept. of Special Services that the student's IEP can be implemented and appropriate services provided at the receiving school and/or another M-to-M school will be recommended to the student and parent where the service is available.

HOW ABOUT TRANSPORTATION?

1. Students will be picked up at regular school bus stops outside the walking area of the student's neighborhood elementary or high school. (Regular school bus stops are presently established beyond a one-mile radius of each school and inside a mile radius if the residence is more than 1½ miles from the school.)
2. Students who reside inside the walking area will be provided transportation from their neighborhood elementary or high school.

3. Routing of majority-to-minority students will be designed to correspond with the regular transportation program whenever feasible. Provisions for transportation will be determined on an individual basis if extreme distances are requested.

4. Information regarding schedules, bus numbers, and other relevant transportation information will be distributed to each participant prior to the opening of the 1983-1984 school year.

For M-to-M transportation information, please call 934-3610, ext. 111 (Transportation Department).

Schools listed below are eligible for M-to-M transfer by black students.

ELEMENTARY SCHOOLS

*Allgood
Ashford Park
*Atherton
Austin
Briarlake
Briar Vista
Brockett
Murphey Candler
Chesnut
Dresden
Dunaire
Dunwoody
Evansdale
**Fernbank
Hambrick
Hawthorne
Henderson Mill
Hightower
Huntley Hills
Idlewood
Indian Creek
Jolly
Kingsley
Laurel Ridge
Livsey
**McLendon
Medlock
Midvale
**Midway
Montclair
Montgomery
Nancy Creek
Northwoods
Oakcliff
Rehoboth
Cary Reynolds
*Rowland
Sagamore Hills
Shallowford
Skyland
Smoke Rise
Tucker
Vanderlyn
Warren
Woodward

HIGH SCHOOLS

Briarcliff
Chamblee
Cross Keys
Druid Hills
Henderson
Lakeside
**Peachtree
Sequoyah
Shamrock
**Tucker

* These schools are near capacity and can only receive 25 new students. These will be accepted based on the date of the application with the first 25 students receiving placement.

** Limited to 50 students.

Schools listed below are eligible for M-to-M transfer by white students.

ELEMENTARY SCHOOLS

Hooper Alexander
Canby Lane
*Cedar Grove
**Chapel Hill
**Clifton
Flat Shoals
*Kelley Lake
Bob Mathis
Meadowview
Snapfinger
Leslie J. Steele
Stoneview
Terry Mill
Tilson
**Toney
Wadsworth

HIGH SCHOOLS

Avondale
Cedar Grove
Gordon
Southwest DeKalb

*These schools are near capacity and can only receive 25 new students. These will be accepted based on the date of the application with the first 25 students receiving placement.

**Limited to 50 students.

Prepared by the Division of Community and Staff Relations.

It is the policy of the DeKalb County Board of Education not to discriminate on the basis of age, sex, race, religion, national origin or handicap in its educatonal programs, activities, or employment policies.

DEKALB COUNTY SCHOOL SYSTEM BOARD OF EDUCATION MEMBERS

H. Paul Womack, Jr., Chairman

Norma Travis, Vice Chairman

Elizabeth Andrews
Joyce Hairston
Frank B. Jernigan
Phil McGregor
Lyman D. Howard

Robert R. Freeman, Superintendent

Edward Bouie
296-1700
Assistant Superintendent for
Community and Staff Relations

Harold Dennis
296-2000
Associate Superintendent for Instruction

Wilburn Adams
934-3610
Associate Superintendent for Business Affairs

Bill Strain
296-1700
Assistant Superintendent for Administration

Clyde Holsclaw
325-2861
Assistant Superintendent for North/Central Area

Bill Pemberton
243-0713
Assistant Superintendent for South Area

Melvin Johnson
243-0714
Administrative Coordinator

The Bi-racial Committee meets the first Monday night of each month at the School System District Office at 3770 North Decatur Road. The meetings are / / // / /

PLAINTIFF'S EXHIBIT 26

Item 3—Letter dated February 17, 1987
to Dr. Robert R. Freeman from (Kathleen L. Wilde)
Attorney at Law

TOTAL OF M-TO-M STUDENTS BY SCHOOL

02/27/87
Data Compiled For: Dr. Bill Strain
By: L. Whittaker

	Black	White	Total
108	20	0	20
113	3	0	3
115	61	5	66
120	6	0	6
132	82	0	82
133	135	0	135
136	1	0	1
146	45	0	45
152	13	1	14
176	9	0	9
178	75	0	75
185	4	0	4
187	40	4	44
190	222	0	222
200	37	0	37
205	20	0	20
212	58	0	58
213	1	0	1
215	99	0	99
218	7	0	7
220	4	0	4
225	27	0	27
230	22	0	22

	Black	White	Total
232	68	0	68
236	7	0	7
250	19	0	19
256	4	0	4
257	9	0	9
260	17	0	17
267	25	0	25
270	3	0	3
275	62	0	62
278	8	0	8
284	11	0	11
287	3	0	3
300	2	0	2
305	47	1	48
315	1	0	1
320	6	0	6
340	9	0	9
344	11	0	11
348	174	0	174
350	62	0	62
398	38	0	38
415	6	0	6
420	6	0	6
425	10	0	10
484	11	0	11
492	28	0	28
496	7	0	7
508	26	9	35
515	219	2	221
522	51	0	51
525	53	0	53
529	83	0	83
533	335	1	336

	Black	White	Total
535	17	0	17
544	1	0	1
549	366	0	366
555	558	1	559
557	93	0	93
565	71	0	71
567	29	0	29
568	188	0	188
570	63	0	63
573	285	0	285
576	1	0	1
580	4	0	4
581	4	0	4
585	16	3	19
593	59	0	59
TOTALS	4167	27	4194

PLAINTIFF'S EXHIBIT 28

SEATS AVAILABLE FOR M to-M TRANSFERS

MAJORITY *WHITE* SCHOOLS

Elementary Schools	1987-88	1988-89
Allgood	87	78
Ashford Park	79	57
Austin	195	316
Briarlake	98	81
Briar Vista	94	56
Brockett	202	205
Murphey Candler	0	0
Chesnut	86	196
Dresden	0	0
Dunaire	10	0
Evansdale	284	241
Fernbank	77	79
Forrest Hills	39	52
Hambrick	81	26
Hawthorne	190	129
Henderson Mill	71	6
Hightower	110	48
Huntley Hills	155	149
Idlewood	204	189
Jolly	91	54
Kingsley	307	308
Laurel Ridge	123	124
Livsey	126	129
Mainstreet	0	0
McLendon	37	38
Medlock	100	47
Midvale	245	240
Montclair	138	119

Elementary Schools	1987-88	1988-89
Montgomery	180	218
Nancy Creek	137	163
Oakcliff	169	157
Oak Grove	122	108
Pleasantdale	192	182
Redan	0	0
Cary Reynolds	30	33
Rock Chapel	0	0
Rockbridge	0	0
Rowland	0	0
Sagamore Hills	168	141
Smoke Rise	120	102
Stone Mill	103	77
Stone Mountain	0	0
Vanderlyn	113	242
Woodridge	0	0
Woodward	0	0
Totals	4563	4390

SEATS AVAILABLE FOR M-to-M TRANSFERS
MAJORITY *BLACK* SCHOOLS

Elementary Schools	1987-88	1988-89
Hooper Alexander	171	167
Atherton	61	81
Avondale	0	0
Canby Lane	101	114
Cedar Grove	58	47
Chapel Hill	38	0
Clifton	64	78
Columbia	38	53
Fairington	0	0
Flat Shoals	110	115
Glen Haven	0	0
Gresham Park	31	34
Indian Creek	0	0
Kelley Lake	198	191
Knollwood	0	0
Mathis	71	47
Meadowview	91	96
Midway	15	78
Peachcrest	5	0
Rainbow	0	0
Sky Haven	4	0
Snapfinger	111	97
L. J. Steele	74	76
Stoneview	0	0
Terry Mill	39	15
Tilson	40	26
Toney	104	85
Wadsworth	5	8
Totals	1429	1408

SEATS AVAILABLE FOR M-to-M TRANSFERS
MAJORITY *WHITE* SCHOOLS

High School	1987-88	1988-89
Briarcliff	NA	NA
Chamblee	517	487
Clarkston	54	106
Cross Keys	323	256
Druid Hills	5	224
Dunwoody	230	161
Henderson	84	84
Lakeside	237	57
Lithonia	0	0
Peachtree	463	386
Miller Grove	44	52
Redan	0	0
Sequoyah	388	360
Shamrock	72	60
Stone Mountain II	61	71
Stone Mountain	72	94
Tucker	301	381
Totals	2851	2779

SEATS AVAILABLE FOR M-to-M TRANSFERS

MAJORITY *BLACK* SCHOOLS

High Schools	1987-88	1988-89
Avondale	126	12
Cedar Grove	168	183
Columbiaer	100	76
Gordon (8&9)	630	632
Southwest DeKalb	206	197
Towers	198	206
Walker (10-12)	503	532
Totals	1931	1838

PLAINTIFF'S EXHIBIT 32

PLAINTIFF'S EXHIBIT 32

PERSONNEL REPORT - DEKALB COUNTY SCHOOL SYSTEM
SHOWING
FACULTY POSITIONS FILLED BECAUSE OF THE CREATION OF NEW POSITIONS, RESIGNATIONS, AND/OR TRANSFERS

	SCHOOLS	NUMBER OF POSITIONS FILLED SINCE JUNE 10, 1986	POSITIONS FILLED RACE WHITE	BLACK	NEW	TRANSFERRED	TRANSFERRED FROM	TOTAL NUMBER OF FACULTY MEMBERS	RACE WHITE	BLACK	
III	HOOPER ALEXANDER	5	2	3	4	1	Hooper Alexander (Spec. Ed.)	28	18	10	36
I	ALLGOOD	8	4	4	7	1	Leslie J. Steele	30	22	8	27
I	ASHFORD PARK	5	4	1	2	3	Terry Mill Chesnut Flat Shoals	32	25	7	22
II	ATHERTON	4	3	1	4	0		32	21	11	34
I	AUSTIN	1	1	0	0	1	Ashford Park	30	26	4	13
II	AVONDALE	11	9	2	9	2	Leslie J. Steele Briarcliff High School	33	25	8	24
I	BRIARLAKE	2	0	2	2	0		22	16	6	27
I	BRIAR VISTA	6	5	1	5	1	Shallowford	22	18	4	18
I	BROCKETT	5	4	1	3	2	Avondale Elem. Rowland	23	16.5	6.5	28
II	CANBY LANE	8	5	3	5	3	Stoneview Tilson Wadsworth Writing Ctr.	29	20	9	31
I	MURPHEY CANDLER	5	2	3	3	2	Shallowford Woodward	29	22	7	24
II	CEDAR GROVE	7	5	2	6	1	Towers High School	32	23	9	28
II	CHAPEL HI''	16	12	4	15		Stone Mountain H.S.	45	27	9	40

PLAINTIFF'S EXHIBIT 34

1985-1986 RACE OF SCHOOL ADMINISTRATORS BY RACE OF STUDENTS

Elementary Schools

Category by % Black Students	No. of Schools In Category	% Black Administrators	Total No. Administrators
1- 20% Black	35	5.7%	35
21- 40% Black	8	0.0%	10
41- 60% Black	7	37.5%	8
61- 80% Black	4	40.0%	5
81-100% Black	20	60.0%	35
TOTALS:	74	30.1%	93

High Schools

1- 20% Black	8	14.8%	27
21- 40% Black	4	29.4%	17
41- 60% Black	3	40.0%	10
61- 80% Black	2	50.0%	8
81-100% Black	5	63.2%	19
TOTALS:	22	27.2%	81

SOURCE: Data taken from Defendants' Exhibit 50—
1985-1986 School Year Elementary School Administrators
Secondary School Administrators

PLAINTIFF'S EXHIBIT 40

MEMORANDUM August 25, 1980

To: Dr. Robert Freeman, Superintendent
DeKalb County Schools

From: Roger Mills

Re: Problem Areas of Mutual Concern and Some Suggestions

I. GENERAL OVERALL CONCERNS

A. Problem: DeKalb County schools are racially segregated. The school system consists of 100 schools (and 8 centers), of which 29 schools (and 1 center) are black. The schools serve about 79,000 students, of whom about 25,000 or 32% are black. More than 20,000 or 82% of all black students are assigned to black schools.

Suggestion: Appoint a Superintendent's Task Force to include administrators and informed parents to begin developing possible plans. An obvious beginning would be converting the schools in the corridor along I-85 losing population to middle schools with system-wide attendance areas.

B. Problem: Racial segregation is increasing in DeKalb County schools. This year 3 schools—Avondale Elementary, Southwest DeKalb High, and Towers High—became black. This coming year Peachcrest Elementary, Avondale Elementary, Avondale High, Southwest DeKalb High, and Towers High will lose most of their remaining white students. The year after, 4 more schools—Fairington, Glen Haven, Indian Creek, and Midway Elementary Schools—will become majority black.

Suggestion: In racially transitional schools, peg minority enrollment to 50% of building capacity. Where the building is undercapacity because of white flight, reassign whites involuntarily from overcrowded white schools. Any new minority students could M-to-M out to the school of their choice.

C. Problem: Top level employees in the administration are all white, with a few exceptions. Blacks who are employed as principals are, with two exceptions, all assigned to black schools.

Suggestion: Hire from the outside blacks for the positions of Deputy Superintendent, Associate Superintendent for Community and Staff Relations, Associate Superintendent for Planning and Development, and South Area Assistant Superintendent. These are key positions where greater racial sensitivity is required. Beginning the next school year reassign black principals on a non-racial basis.

D. Problem: The School Board is all white. It is not possible for a black person to become elected because members are chosen on a county-wide instead of district basis.

Suggestion: Submit as a part of the annual legislative packet for local legislation a request for expanding the Board to 9 members with at least 6 members elected by district. This would allow the black vote not to be diluted by the white vote and yet would retain the county-wide feature that some feel is desirable.

E. Problem: Performance levels on the Georgia Criterion Referenced Test and the California Achievement Test are uniformly lower in the black schools in comparison with the white schools in the system. Attempted justifications include the usual demographic theories (neighborhood transition), sociological theories (cultural and environ-

mental differences), and psychological theories (motivation and self-image).

Suggestion: Desegregate the schools. Allocate resources according to need, not per capita.

II. SPECIFIC IMMEDIATE CONCERNS

A. Problem: Black students eligible to M-to-M out of Southwest DeKalb High (59% black), Towers (57% black), and Avondale Elementary (51% black) have been advised erroneously they could not do so. The May 8, 1979 court order, p. 11, says school officials are to estimate fall enrollments by race when deciding which schools come under the M-to-M program. Back in May, all 3 of these schools had projected majority black fall enrollments. In the same order, the court also expressed the hope that the system would mount an all-out campaign to enroll black children as M-to-M students in schools which thus far have achieved little integration.

Suggestion: Comply with the order. Notify students they may transfer. Encourage them to do so.

B. Problem: The transportation scheduling of M-to-M students this fall is inefficient and cumbersome, having the effect of chilling M-to-M participation. Example: A busload of M-to-M students from the Mathis-Chapel Hill-Rainbow neighborhood has signed up to M-to-M to Sagamore Hills Elementary School, about 40 minutes away. The group was broken up, some students being assigned to different buses, and all students riding at least 2 buses to get there. Time of the trip: 1 hour and 40 minutes each way.

Suggestion: Allow parents access to pupil locator and route maps for M-to-M and cooperate

with them in making any modifications to enhance convenience and efficiency.

C. Problem: The younger brothers and sisters of black M-to-M students at Fernbank Elementary School have been advised erroneously they could not themselves M-to-M to Fernbank because of overcrowding. New white students, nevertheless are permitted to enroll. The court order of November 7, 1976, p. 24, says, "Space must be made available in the receiving school for transferees who shall be given priority for space over other new students, but in no instance shall a transferee displace a student previously enrolled." Fernbank has a capacity of 754 (29 classrooms x 26 students per classroom) but an enrollment of 730. Were Fernbank actually overcrowded, then the attendance line need be shifted only slightly because Briar Vista, the next school over, has only about 480 students in a building with a capacity of 832 (32 classrooms x 26 students per classroom).

Suggestion: Comply with the order. Permit the black children to M-to-M to Fernbank. If Fernbank fills up, alter the attendance line and also encourage M-to-M students to go to Briar Vista, too. (In fact, the overall M-to-M program should be utilized to relieve overcrowded black schools and fill up white schools with seriously dwindling enrollments in north DeKalb.)

D. Problem: Despite notable efforts by individual members (e.g. Dick Hill, Phil McGregor, Frances Pauley), the Bi-Racial Committee has ceased to be held in high regard and now functions in a marginal way. The Committee has been plagued by the repeated absence of a quorum and by members who do not do enough homework to make informed judgments.

Suggestion: Increase the quality and importance of the Committee by becoming a member yourself. Join with plaintiffs in requesting court replacements for inactive members and in possibly expanding the size of the Committee.

III. SPECIFIC LESS IMMEDIATE CONCERNS

A. Problem: The continuous progress program of individualized instruction is being misused. Students assigned to particular groups tend to stay with those groups. There is group, not individual, movement up. Disproportionate numbers of minority children are in these lower groups in each grade. The adverse effects of such grouping tend to be cumulative so that by the time lower level students reach high school and have the opportunity to choose course levels themselves the choice is illusory.

Suggestion: Begin moving away from such grouping, de-emphasizing levels. Push individual mobility rather than grouping. Grouping should be for no longer than is necessary. Heterogeneous assignment of pupils should be the rule not the exception. Examine the percentile rank on the CAT of students in the lower levels over two annual testing periods to determine the educational benefit of the present program. Conduct in-service training workshops on practical problems in "achievement" grouping and classroom management.

B. For the 1979-80 school year, black teachers represented only about 16% of all new hires. The relevant labor market in the Atlanta SMSA is about 27% black for elementary and secondary education teachers. The applicant pool is underrepresentative of black applicants because of the

absence of recruiting. Retention of minority faculty in all white schools in north DeKalb is impaired by the absence of human relations seminars for white teachers and principals, despite the obvious need.

Suggestion: Recruit qualified minority teachers. Conduct human relations seminars at schools where there are staff problems along racial lines.

C. Problem: Only 9% of all special education teachers are black. The relevant labor market for such teachers in the Atlanta SMSA is probably about double that percentage. The applicant pool in DeKalb is underrepresentative of black applicants because of the absence of recruiting.

Suggestion: Affirmatively recruit minority special education teachers.

D. Problem: Inexperienced white new hires are assigned to Gordon and other black schools which have large turnovers. In the past, more experienced blacks were involuntarily reassigned to white schools whose faculties were disproportionately white.

Suggestion: Reassign experienced whites to Gordon and other black schools with big turnovers. The teacher contracts with the system, not the individual school. Unlike student assignment which is pegged to geographic residence, teacher assignment is according to system needs, not teacher residence. If a white teacher is unwilling to go, then that teacher should not be given the opportunity to have another position elsewhere in the system.

E. Problem: The system has approved a zone change request made by representatives of the parents of 21 white students. The zone change

permits 21 whites to leave Glen Haven, a 28% black school near the path of racial transition and attend Rowland, a 2% black school. Were the zone change not permitted, Glen Haven would be about 26% black. The court order dated June 18, 1969, p. 7, says the School Board will, in locating and designing new schools, in expanding existing facilities, and in consolidating schools, do so with the objcetive of eradicating segregation and perpetuating desegregation. The same principle applies with respect to zone changes. The reason given by the parents for requesting the zone change is the concern of crossing Covington Highway.

Suggestion: Permit the zone change only for the present school year. Discontinue it thereafter because of the adverse effect it will have on perpetuating desegregation.

F. The system is considering the acquisition of a new school site in southeast DeKalb. The area is presently white but in the path of what will become racial transition in several years. Presently there are dozens of schools greatly underutilized and undercapacity. None are located in the immediate vicinity of population increases. The overall enrollment of DeKalb students is declining and will be very rapid in the next decade.

Suggestion: Decline to acquire the site. Conduct a study exploring the feasibility of noncontiguous zoning or alteration of a chain of attendance lines (as is done in the black schools).

PLAINTIFF'S EXHIBIT 42

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
P. O. Box 1437
Atlanta, Georgia 30301

Chambers of
NEWELL EDENFIELD, Judge

February 13, 1978

Mr. Richard A. Hills, Jr.
Kutak Rock & Huie
1200 Standard Federal Savings Building
Atlanta, Georgia 30303

Re: Pitts, et al. v. Cherry, et al.
Civil Action No. 11946

Dear Mr. Hills:

This will acknowledge receipt of your letter delivered by hand on February 8th. In answer to your request, specific direction as to the role and authority of a biracial committee is not only difficult, it is virtually impossible. This is true because, in law, there is no provision for such a committee in the first place. The practicality of forming such committees originated with federal judges confronted with school problems in the area of race in an effort to resolve racial disputes in school matters at the local level wherever possible and in order to remove the district courts as nearly as possible from the day-to-day operating problems of the school system. Such being the purpose and intent in creating such committees, I know of no racial problem affecting the schools on which the committee is prohibited from expressing itself. Of course, such a committee has no power to direct the school board as to any particular matter, but I see much benefit to be

gained and nothing to be lost in having the committee express its views on the problems you raise to the school board. I cannot order them to do so, but I would hope that the school administration would give serious consideration to any views this committee might express, since a failure to do so could result in further hearings and orders from the court which, with cooperation from both sides, should not be necessary.

To answer your question, therefore, I would suggest that this committee set down for consideration both of the problems you enumerate and any others you deem appropriate to race questions in the DeKalb schools. You may, of course, take up these matters with or without an administration representative being present, and present your views in writing, both to the school administration and to this court.

I hope this answer, although not definitive, will be of some help.

Sincerely,

/s/ Newell Edenfield
NEWELL EDENFIELD
United States District Judge

NE:lh
ccs: Mrs. Eunice Smith, Chairperson
Biracial Committee
Gary Sams, Esq.
Roger Mills, Esq.
Mr. Joe Renfroe
Clerk, U.S. District Court

PLAINTIFF'S EXHIBIT 44

November 20, 1979

Memo To: Members of Bi-racial Committee
Members of Task Force Committee

From: Evelyn Smith, Secretary
Bi-racial Committee

Reference: Minutes of Previous Meeting

The Bi-racial Committee met November 5, 1979. Evelyn Smith called the meeting to order at 7:10 p.m.

Dr. Bill Adams presented changes in attendance areas for the following schools:

Tucker to Livsey

Briarlake to Henderson Mill

Vanderlyn to Kingsley
Dunwoody High to Peachtree High

Kingsley to Vanderlyn
Peachtree High to Dunwoody High

The proposed changes in attendance areas were approved as presented.

Minutes of the October 1, 1979 meeting were discussed. Ms. Elaine Davis questioned the portion of the minutes which related to the Task Force Committee receiving their materials.

After a discussion, Dick Hills made the following motion: "I move that no material that routinely or normally comes to the Bi-racial Committee shall go to the Task Force unless it first comes to the Bi-racial Committee." The motion was passed.

Minutes of the previous meeting were approved.

Bylaws were discussed. Ms. Elaine Davis questioned several portions. A motion was made and seconded to reconsider the Bylaws at the December meeting.

Ms. Davis gave a report on the Task Force Committee. The committee is making a study on a four-phase desegregation plan for DeKalb County.

1. Step up the M-to-M program in elementary schools.
2. Center of county to have middle schools for all 6-7-8-grade students in county.
3. Neighborhood high schools for grades 9 and 10.
4. Specialty schools for grades 11 and 12; the purpose—for students interested in a certain curriculum could put all study on that interest.

The Committee is planning a survey to be sent to M-to-M parents. A group of white parents and also a group of black parents will be asked to fill out the survey. The survey is to discover their feelings about the M-to-M program. The questionnaire will be presented to the Biracial Committee for approval (in December).

Ms. Davis repeated that the Task Force Committee is meeting twice a month with good attendance.

The meeting was adjourned at 8:10 p.m.

THE BI-RACIAL COMMITTEE WILL *NOT* MEET IN DECEMBER. THE NEXT REGULAR MEETING WILL BE HELD JANUARY 7, 1980.

Evelyn Smith, Secretary
Bi-racial Committee

Present:

Evelyn Smith
Elaine Davis
Vivian Billins
Richard Hills
Oscar Kirk
Bill Mayweather

ES:gc

PLAINTIFF'S EXHIBIT 45

November 1, 1979

Memo To: Members, Task Force on Desegregation
Members, Bi-racial Committee

From: Jane H. Terry, Secretary
Task Force on Desegregation

Reference: Minutes of Previous Meeting

The Task Force on Desegregation met at 8 p.m., October 17, 1979, in the Board Room of the DeKalb County School System's District Office. A new member, James MacMillan, was introduced to the group. He is an alternate representative from the NAACP. Also present were Elaine Davis, presiding; Marcia Barowski; Gail Edmondson; Debby Nave; Margaret Spencer; and Jane Terry.

THE NEXT MEETING OF THE TASK FORCE WAS SET FOR NOVEMBER 8, 1979. PLEASE REMEMBER THIS DATE. TIME: 8 P.M.

Ms. Davis appointed Margaret Spencer vice chairman and Jane Terry secretary.

Ms. Davis outlined the planned survey of DeKalb parents. The survey will ask why or why not parents participate in M-to-M transfers and under what circumstances those not taking part would participate. The survey will seek to discover the feelings of M-to-M participants and ask for suggestions. The draft should be ready in two weeks.

The major portion of discussion covered concepts of school desegregation. These actions were considered desirable:

1. Provide a late afternoon bus to allow bussed students to participate in after-school activities

2. Assign bussed students to "families" near the school for dealing with emergencies such as sickness, injuries, etc.

3. Build in incentives to encourage whites to move south and blacks to move north

4. Provide awareness or anti-prejudice courses, workshops, or seminars for students and (especially) teachers

The group considered middle schools (sixth, seventh, and eighth grades) placed in the central area as an integrating tool. We are in disagreement as to whether this is a good time or the worst time in a child's development for such a change. A change to middle schools might satisfy many vocal critics of the school system.

Magnet schools—or specialty schools—appealed to some members as a mixing tool at high school level. Present DeKalb policy of allowing a student to enter any school for curriculum purposes might weaken this strategy. Drama, music, foreign language, and auto repair are examples of the specialities mentioned. Some members thought that few high-schoolers would choose to leave their home district.

As a result of the discussion, Ms. Davis will add to the survey a query to high school students to find out how many would go to a specially-equipped school out of their district.

At the next meeting, Ms. Barowski will bring some preliminary findings of a DeKalb school study which the League of Women Voters has been working on. Warren Hudson, of the Office of Civil Rights, will provide copies of all working desegregation plans for our study.

Jane H. Terry, Secretary
Task Force on Desegregation

JHT:gc

PLAINTIFF'S EXHIBIT 47

SUMMARY REPORT OF THE TASK FORCE TO THE BI-RACIAL COMMITTEE

March 2, 1981

The Task Force established by the Bi-racial Committee has looked for voluntary methods of desegregation to recommend for DeKalb County Schools.

The preliminary work included studying housing patterns in the county and reviewing the past and present racial makeup of the schools. The committee conducted a survey of participants in the M-to-M plan in order to determine its strengths and its problems. The committee studied other school systems and their success or failure with various methods of integration.

It is recommended, first of all, that the current M-to-M program be maintained, with the following additions:

1. Add a late afternoon bus for students who stay past dismissal time for sports; clubs, makeup work or other school activity. One bus could possibly serve several schools with a specified pickup time. Sponsors of extracurricular activities would be sure to dismiss in time for students to catch the bus.

2. Require eighth through twelfth graders to stay at the chosen school for a minimum of one full quarter.

For elementary schools, special programs for paired grades are recommended, using the following guidelines:

1. At some selected elementary grade level, all students not already in an adequately integrated classroom would be required to take part in a year of weekly activities with a partner school. The activity could be from core curriculum or

enrichment. This would insure integrated experience for each child on a minimum basis, at least once in his/her school experience.

Example of how this could work: Identify the racial makeup of all fifth grade classes and locate those with 0% to 20% white. Pair these to create racially mixed units, considering geography, space in the schools, and the like. Every Thursday, Class A (largely black) and Class B (largely white) would spend the day together at School A or School B for a day of music, art, physical education, lunch, and creative writing.

The location could vary; the program could be different; field trips could be included. A planning staff would be needed, but the resident teachers would also help. Empty or underutilized schools could be used, or classes could visit each other's schools.

2. The burden of travel should be borne equally by partner schools. No group should do all the traveling while the other group remains at its home school.

3. An extended day program is also recommended for elementary schools. In this arrangement, some elementary schools would provide a program until about six p.m. This would serve working parents who need child supervision until they are home.

4. A child would be bussed from his/her home school to the assigned day center. His/her assignment would be made first on the basis of racial balance at the center; second, on the basis of convenience to home school or parent's place of employment. No bus would be provided in the late afternoon. Parents would pick up children at the center.

5. Staffing for the program would provide salary supplement for teachers who wish to work longer hours. Para-professionals could also be hired.

6. The children should be provided physical education opportunities, tutoring in academic subjects, and crafts. Other subject areas such as music, dance, and drama might also be offered.

On the high school level, creation of an occupational high school which arranges for on-job training was recommended. The location should be in the center of the county, convenient to both north and south. Racial balance should be maintained in enrollment.

The Task Force considered magnet high schools as a tool for desegregation. The majority questioned whether magnet schools would make any major contribution to integration in the DeKalk System at the present time.

Middle schools, either countywide or on a limited basis, were discussed by the Task Force. The committee agreed on the two points listed below.

1. If the school board adopts magnet schools, the committee strongly recommends middle schools as part of the magnet program.

2. If middle schools are taken up countywide, they must be racially integrated.

In the discussions of the committee it became clear that some schools are perceived as better than others. The Task Force outlined recommendations to the School Board, and included four major items.

1. Public perception of the individual schools needs to be determined.

2. If there are real inequalities among the schools, this needs to be determined.

3. If inequalities exist, these need to be corrected. If a better pupil/teacher ratio is needed at cer-

tain schools, it should be provided. If a higher allocation per pupil is needed at certain schools, it should be provided. If more space is needed, it should be provided.

4. Work to improve the public perceptions of the schools and their relative effectiveness.

The Bi-racial Committee is requested to respond to the proposals of the Task Force Committee.

Submitted by

Jane Terry, Secretary
Task Force Committee

PLAINTIFF'S EXHIBIT 66

MEMORANDUM

TO : INTERESTED PERSONS

FROM : ROGER MILLS
DEKALB COUNTY NAACP

RE : PROPOSED PANOLA WAY ELEMENTARY SCHOOL ATTENDANCE AREA

DATE : MAY 22,1987

School Board Action: In March 1987 the School Board approved attendance lines for Panola Way Elementary, a new school which will open in the fall of 1987. In April 1987, over NAACP objections, the Biracial Committee by a vote of 5-0-1 approved the action. The attendance area of the new school is carved out of the existing attendance zones of Redan Elementary School, now 27% black, and Stoneview Elementary School, now 55% black. With the change in the fall of 1987, Redan will become 25% black and Stoneview 60% black. The new school, Panola Way, will open 40% black. The plan follows:

School	Net Cap.	86-7 Enroll.	% Black
Panola Way Elem.	884	797	40%
Redan Elem.	754	915	25%
Stoneview Elem.	754	747	60%

Panola Way will be underutilized, 87 students under capacity this fall, while Redan Elementary will remain over capacity this fall by 161 students.

This aggregate contiguous area will, this fall, consist of 2459 students, 41% black. The net capacity of the three schools servicing these students is 2392, a shortage of 67 seats.

Objections Raised: The NAACP by Roger Mills argued that the Board had taken an affirmative action which

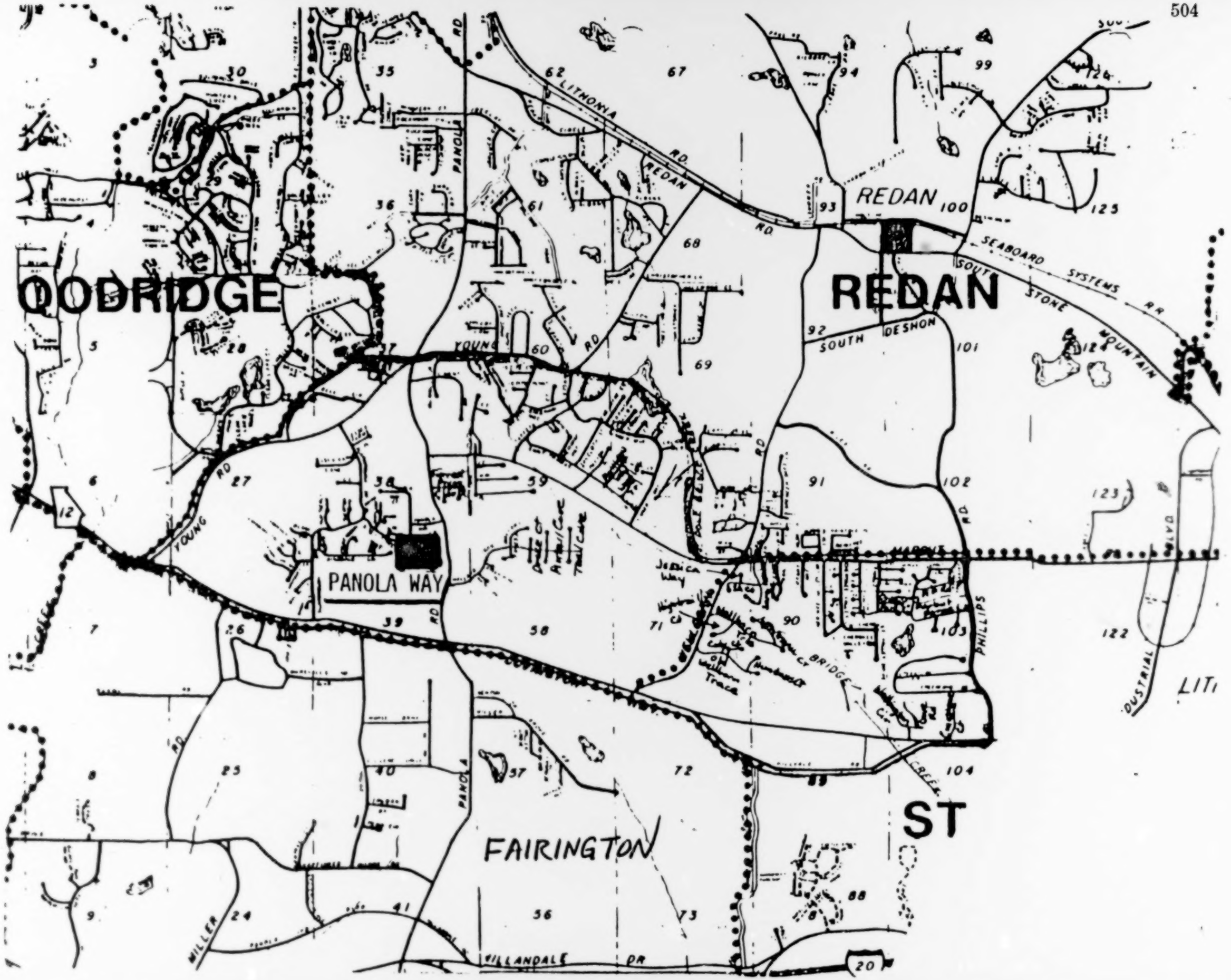
preserves the racial segregation of the two host schools. The NAACP urged instead adoption of an alternative plan:

School	Net Cap.	87-8 Enroll.	% Black
Panola Way Elem.	884	884	41%
Redan Elem.	754	754	41%
Stoneview Elem.	754	754	41%

(Also, to provide additional relief from overcrowding at Redan, 67 Redan students would need to be reassigned to other undercapacity schools.) The advantage of the NAACP plan is twofold: (1) it eleminates the racial identifiability of the two host schools, and (2) it fully utilizes all available facilities for immediate relief from overcrowding.

Administrative Response: The response has consisted of three points: (1) The Board action will not increase segregation at Stoneview because it would become almost 60% black this fall without 280 of its students being transferred to Panola Way. (2) The lines should not be redrawn to take in more of the Redan Elementary area because in the past school year, the rate Redan is becoming black—a 9% increase—is greater than the rate for Stoneview—a 4% increase. (3) The administration will present a plan to relieve overcrowding at Redan Elementary in the near future. (The proposed school budget calls for funds for construction of an addition at Redan and other schools.)

NAACP Rebuttal: (1) The area taken away from Stoneview will have 280 students this fall, of whom 43% are black, according to the administration. If this is true, then Stoneview would otherwise be 53% black this fall were the students not transferred. (2) The issue is not whether more students should be taken from Redan rather than from Stoneview to go to Panola Way, but rather whether Stoneview's attendance area should be redrawn for some Redan students to go to Stoneview. Additional space at Stoneview could be obtained without increasing the black percentage at Panola Way by having some more Stoneview students go to Panola Way. (3) Proposing construction in the future provides no relief for the 1987-88 school year even if it were begun at once. Redan's projected enrollment this fall, after some of its students are removed and place at Panola Way, will be 915 students in a building with a net capacity of 754. Also by proposing to build additions to several schools, the administration is treating each school like it is a separate self-contained entity, unaffiliated with any other schools, rather than treating each overcrowded school as a component of the system as a whole. It costs more to build buildings than to move attendance lines. It is educationally unsound because it will make these elementary schools exceed the maximum desirable size and will overtax both the lunchroom and the library at each facility. It is contrary to a provision in the June 19, 1969 court order which provides that the Board, in constructing schools, do so in a manner which perpetuates desegregation and does not reestablish the dual system.



QODRIDGE
REDAN
REDAN
PANOLA WAY
FAIRINGTON
ST
LITHONIA RD
REDAN RD
YOUNG RD
SOUTH DESHON
SEABOARD SYSTEMS RR
STONE MOUNTAIN
PHILLIPS RD
BRIDGE CREEK
PANOLA RD
MILLER RD
WILLANDALE DR
DUSTRIAL BLVD
Jessica Way
Trace

DEFENDANT'S EXHIBIT R-17 C.A. 11946

PLAINTIFF'S EXHIBIT 94

24-64

RACIAL TRANSITION HIGH SCHOOLS 1969 1983

	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1986
AVONDALE	8.5	9.7	12.6	16.7	21.1	25.9	29	35.4	42.8	50.3	54.5	58.5	60.2	62.1	61.9	70
BRIARCLIFF	0.4	0.4	0.3	0.1	0.3	0.2	0.2	1.4	1.5	3.2	6.1	12.6	17.7	28.5	40.8	52
CEDAR GROVE				12.1	15.3	14.2	15.5	21.2	32.4	48.6	61.0	70.6	76.5	77.5	82.0	92
CHAMBLEE	3.3	3.3	3.7	3.6	3.6	3.0	4.5	4.7	4.7	6.3	6.5	7.2	8.4	11.7	11.2	17
CLARKSTON	12.9	12.1	10.3	9.4	8.1	5.8	4.8	4.9	4.9	6.3	7.9	7.7	10.5	12.0	12.4	25
COLUMBIA	0.3	1.5	3.0	9.3	21.1	35.7	49.9	62.8	76.7	87.8	93.9	95.5	95.9	96.9	97.1	98
CROSS KEYS	6.3	5.6	6.2	6.5	8.4	8.1	7.1	6.2	5.4	4.4	5.5	5.4	7.1	8.5	10.5	27
DRUID HILLS	5.3	5.4	6.2	4.6	6.4	7.9	8.0	9.6	13.4	14.1	18.3	26.3	38.6	38.3	44.2	44
DUNWOODY				0	0	0	0	.01	0.1	0.2	0.2	0.5	0.3	0.5	0.6	2
GORDON	16.5	28.7	45.8	72.9	88.8	97.4	98.7	99.4	99.3	99.4	99.5	99.4	99.5	99.6	99.5	100
HENDERSON	0.1	0.1	0	0.1	0	0	0	0.1	0	0.2	0.1	0.7	0.8	2.1	5.1	28
LAKESIDE	0.7	0.9	0.6	0.7	0.6	0.8	0.7	0.8	0.9	1.3	1.8	4.3	7.2	17.0	28.1	43
LITHONIA	35.0	32.1	30.3	28.5	30.1	22.1	22.0	25.7	25.2	24.5	24.8	25.6	25.2	31.4	31.3	42
PEACHTREE	0.3	0.4	0.5	0.3	.05	.4	0.4	0.6	0.4	0.9	1.2	2.0	2.2	2.5	3.1	12
REDAN								2.8	4.4	5.3	12.0	13.0	13.9	15.2	16.0	28
SEQUOYAH	0.4	0	0	0.2	.3	.2	0.2	.6	1.3	0.6	1.7	3.2	3.8	4.4	8.4	24
SHAMROCK	1.4	1.7	1.6	1.4	.9	1.8	4.4	2.6	3.2	4.0	4.7	5.3	6.2	8.7	12.1	29
S.W.DEKALB	4.5	3.9	3.6	1.2	.6	0.9	1.3	3.0	11.6	28.2	41.4	54.0	66.0	75.4	82.6	96
ST. MOUNTAIN	13.8	12.3	9.5	6.5	5.8	4.8	3.9	3.8	3.3	2.8	3.8	3.4	4.4	4.6	4.3	7
TOWERS	0.2	0.2	0.4	0.6	1.1	1.0	2.5	4.3	10.0	22.3	37.1	48.7	52.1	54.3	58.1	69
TUCKER	2.2	1.7	1.8	1.5	1.3	1.1	1.2	1.4	1.4	1.5	2.0	2.3	2.2	2.4	2.4	8
WALKER	1.8	2.6	3.8	12.5	34.2	60.3	72.4	82.1	88.5	91.7	93.0	95.0	96.6	96.0	96.7	99
MILLER GROVE (8-9)																40
STONE MOUNTAIN (8)																10
															TOTAL HIGH	43

0-20 %
21-40 %
41-60%
61-80%
81-100%

RACIAL TRANSITION ELEMENTARY SCHOOLS 1969 1983
% BLACK ENROLLMENT

DEFENDANT'S EXHIBIT DMI
R-21
C. 2-11-86

	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1986
ORGROVE						2.2	2.3	2.7	2.2	5.3	6.0	7.9	6.9	8.1	10.9	14
PEACHCREST		0.5	2.5	6.8	10.4	14.6	17.5	25.4	30.0	42.0	51.1	58.5	62.4	65.5	75.4	79
PLEASANTDALE									0.3		0.7	0.8		0.9	5.1	10
RAINBOW		0.5	0.3		0.1	0.5	1.1	4.7	14.5	40.3	65.6	82.3	88.0	90.0	92.6	96
REDAN	19.2	15.0	13.3	10.8	7.1	5.0	5.4	5.4	4.5	4.4	6.0	8.2	9.7	10.5	11.9	23
CARY REYNOLDS				0.3	0.7	1.6	2.1	2.6	3.1	3.7	3.4	4.7	8.2	9.7	9.2	20
ROCK CHAPEL	17.3	18.4	16.6	13.5	11.5	8.1	8.5	6.5	5.8	5.9	5.7	5.8	6.2	6.1	6.5	7
ROCKBRIDGE						0.1	0.1			0.5	0.6	0.9	0.8	0.9	1.5	4
ROWLAND	0.3	0.1	0.2			0.2	0.5	0.3	0.2	1.7	2.1	2.6	4.6	8.0	14.3	43
SAGAMORE HILLS									0.2	1.0	1.8	7.7	14.1	19.6	19.0	24
SHALLOWFORD		0.1									0.4	0.2	1.5	1.5	2.0	CLOSED
SKY HAVEN	3.2	6.3	11.9	41.8	62.6	79.8	91.3	94.0	96.7	95.7	96.0	96.1	95.7	96.3	96.8	97
SKYLAND	0.9				0.2	0.3	0.2	0.4	0.6	0.8	2.5	2.7	2.3	2.7	3.5	CLOSED
SMOKE RISE	11.4	8.3	7.5	7.1	6.7	5.9	6.7	5.5	5.1	5.5	4.9	9.2	5.5	6.8	9.9	13
SNAPFINGER				0.5	2.9	9.0	22.0	44.5	64.7	79.2	91.5	94.1	95.7	96.2	97.0	97
LESLIE J. STEELE	13.0	26.7	84.8	96.2	98.4	98.7	98.7	98.9	99.0	98.2	98.2	99.3	98.9	98.7	99.0	100
STONE MILL							0.4	0.2	0.2	1.1	2.7	2.3	4.2	3.7	3.5	16
ST. MOUNTAIN	15.8	11.2	10.5	11.6	8.2	8.9	10.7	11.0	10.7	9.7	11.9	11.1	12.9	13.0	15.1	18
STONEVIEW	11.2	22.1	22.1	26.1	29.5	36.0	35.7	40.2	38.6	39.9	39.9	42.5	[illegible]	[illegible]	[illegible]	53
TERRY MILL	76.4	99.0	99.6	96.7	97.3	97.2	98.2	98.6	97.9	99.1	99.0	99.1	99.5	98.8	98.6	98
TILSON	16.0	34.2	63.5	89.6	96.9	98.9	99.1	99.0	99.1	99.6	99.2	99.9	99.4	99.7	99.7	100
TONEY		2.4	9.6	[illegible]	83.7	92.1	96.0	96.6	97.0	97.7	98.1	98.8	98.6	98.1	97.8	98
VANDERLYN					0.3	0.3	0.4	0.4	0.7	1.5	2.3	2.5	2.8	2.7	4.1	3
WADSWORTH				5.7	26.8	[illegible]	67.8	80.3	86.2	88.5	93.2	92.9	93.2	92.8	95.6	97
WOODRIDGE								0.7	0.6	1.4	1.9	2.6	3.7	4.3	7.7	23
WOODWARD	0.1				0.2	0.2	5.4	7.0	6.8	9.4	11.6	11.7	15.3	19.6	18.3	31

TOTAL 49
ELEM.

24 - 64

DEFENDANT'S EXHIBIT
R-22
C.A. 11946

0% - 20%
21% - 40%
41% - 60%
61% - 80%
81% - 100%

RACIAL TRANSITION ELEMENTARY SCHOOLS 1969 1983
% BLACK ENROLLMENT

TOTAL SYSTEM: 46.5

	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1986
HOOPER ALEX.	28.2	36.8	47.5	63.6	70.9	77.5	79.5	82.3	86.2	85.0	84.7	87.0	87.3	88.0	89.7	94
ALLGOOD	0.3	0.2	0.1	0.3	0.1	0.3	0.1	0.1				0.1	1.2	1.5	2.1	13
ASHFORD PARK				0.2	0.8	1.9	0.1	5.9	7.1	5.3	5.7	5.3	6.6	8.9	10.3	15
ATHERTON				0.3		0.1	0.1	0.1	6.0	7.2	13.6	18.8	27.1	37.5	46.7	67
AUSTIN							0.2			0.1	0.3	0.1	0.2	0.2	0.2	1
AVONDALE	20.2	15.5	15.2	16.9	15.0	18.9	31.0	39.9	38.9	41.3	44.6	49.7	51.6	56.8	61.0	73
BRIARLAKE	0.5	0.5	0.4	0.5	0.3	0.4	0.4		1.1	2.7	3.7	3.6	5.9	9.6	11.8	27
BRIAR VISTA							0.8	0.9	2.3	2.5	1.7	3.9	7.0	11.7	15.6	39
BROCKETT	0.1							0.2						0.4	0.4	2
CANBY LANE	0.1	0.1	0.1			0.1	3.0	8.1	20.1	45.7	64.9	74.0	84.7	83.1	86.3	91
MURPHEY CANDLER	16.1	14.0	13.1	10.1	7.6	4.1	4.7	5.3	7.4	8.5	9.1	9.9	11.8	14.5	20.0	43
CEDAR GROVE					3.4	14.0	11.5	21.5	32.9	54.4	61.6	68.8	72.5	73.8	76.3	89
CHAPEL HILL	10.9	11.9	12.1	11.1	8.6	10.0	12.0	13.3	21.7	41.9	63.7	77.0	87.0	90.9	95.3	99
CHESNUT								0.2	0.4	0.4	0.6	0.8	2.1	2.4	6.3	9
CLIFTON	4.7	7.0	6.3	9.5	23.7	65.7	76.7	88.3	94.3	96.5	97.5	98.3	98.5	98.2	98.7	97
COLUMBIA			0.1	1.8	10.6	26.8	48.2	66.0	78.5	91.7	96.0	97.1	97.5	98.7	98.7	98
DRESDEN		0.1			0.6	0.7	1.1	0.5	0.8	2.1	4.6	7.0	9.1	8.5	13.1	35
DUNAIRE	0.6			0.2	0.3	1.2	0.8	1.0	1.2	2.7	3.7	6.2	6.2	12.7	23.0	42
DUNWOODY					0.2	0.1			0.1		0.1	0.3	0.8	1.7	2.5	CLOSED
EVANSDALE												0.5	0.3			3
FAIRINGTON							5.9	6.8	10.2	11.4	19.4	31.9	36.7	45.0	55.0	78
FERNBANK	0.4					0.5	2.7	4.3	9.9	21.3	31.9	32.1	33.0	36.3	39.1	45
FLAT SHOALS			0.2	4.5	33.0	55.0	67.5	83.1	92.4	98.0	98.0	98.9	99.4	99.3	99.6	9
FORREST HILLS	25.8	22.6	20.4	20.8	22.5	25.5	26.8	26.3	21.1	33.5	38.5	41.0	41.0	[illegible]	[illegible]	46
GLEN HAVEN	2.1	1.7	1.6	1.7	1.9	3.1	7.5	9.0	7.1	15.7	20.2	28.4	28.8	28.6	30.6	55

DEFENDANT'S EXHIBIT R-23 C.A. 11946

24-64

0 20%
21 40%
41 60%
61 80%
81 100%

RACIAL TRANSITION ELEMENTARY SCHOOLS 1969 1983
%BLACK ENROLLMENT

	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1986
GRESHAM PARK			1.6	23.1	60.8	79.2	89.8	95.7	98.0	98.4	97.9	98.1	98.1	97.6	97.5	98
HAMBRICK										0.5	0.7	0.2	0.7	1.5	4.0	30
HAWTHORNE				0.2		0.2	0.2	0.7	0.7	1.4	1.1	3.5	3.4	4.0	6.6	21
HENDERSON MILL											0.6	0.6	0.3	9.4	15.4	28
HIGHTOWER	1.1	1.0	2.1	2.0	3.2	3.0	2.3	3.0	2.9	5.8	6.4	9.3	9.1	11.2	12.1	31
HUNTLEY HILLS	8.1	8.5	7.8	6.8	6.0	6.5	7.3	6.3	6.0	7.7	6.5	9.0	12.8	17.3	16.3	20
IDLEWOOD	4.0	1.8	2.5	2.1	2.5	2.3	2.2	2.5	2.6	4.4	5.5	5.8	3.9	7.4	9.7	20
INDIAN CREEK	21.3	19.6	14.2	11.7	9.8	14.9	16.7	16.3	16.7	16.2	22.1	26.7	31.3	33.1	36.1	57
JOLLY			0.1	0.1			0.4	1.1	0.9	4.2	2.4	4.8	6.7	7.9	9.8	34
KELLEY LAKE	1.4	1.4	7.4	36.7	57.7	75.5	88.6	96.2	99.0	98.6	99.1	99.1	98.6	93.8	98.5	99
KINGSLEY			0.1									0.3	0.7	1.0	2.0	3
KNOLLWOOD	0.1	0.1	0.8	8.5	24.4	36.1	43.1	57.4	69.3	81.9	85.7	88.9	88.9	89.8	91.1	94
LAUREL RIDGE							0.3	0.6	0.6	1.2	1.3	1.6	3.2	1.6	1.1	11
LIVSEY										0.2					1.6	2
MAINSTREET												2.5	7.7	8.1	10.1	22
BOB MATHIS							1.2	4.9	25.9	45.7	65.9	82.1	86.2	89.9	91.9	98
McLENDON	13.8	22.5	21.8	16.7	15.4	7.8	7.9	7.5	9.3	11.0	14.2	15.9	17.9	17.2	19.8	34
MEADOWVIEW			0.6	10.2	40.7	57.9	65.9	73.6	75.9	79.9	79.3	80.4	78.8	80.6	81.6	8
MEDLOCK	19.1	13.6	13.8	16.1	15.7	19.9	19.9	19.6	18.6	19.0	22.5	21.6	27.7	29.4	33.8	35
MIDVALE		0.1	0.4							0.2	0.6	0.2	0.2	0.5	0.2	5
MIDWAY		0.2	0.2	1.0	1.1	2.0	1.7	5.0	8.9	14.8	24.4	29.4	35.4	37.1	43.3	56
MONTCLAIR	0.8	0.4	0.5	0.8	1.4	1.0	2.1	2.1	1.7	2.4	8.6	6.3	10.2	11.4	11.7	23
MONTGOMERY	8.9	10.5	10.1	7.5	10.9	8.6	11.5	11.2	9.9	10.3	10.1	11.9	13.4	14.0	14.7	21
NANCY CREEK		0.1	0.3	0.4	0.1		1.5	2.1	1.6	1.2	2.2	6.9	5.0	9.4	11.8	18
OAKCLIFF		0.1	0.1	0.4	0.5	0.3	0.8	0.6	0.7	1.5	1.6	2.3	3.9	5.6	7.4	17

PLAINTIFF'S EXHIBIT 96

DEKALB COUNTY ELEMENTARY SCHOOLS, BY TYPE

TYPE I SCHOOLS
(Long-Term White):

Allgood
Ashford Park
Austin
Briarlake
Briar Vista
Brockett
Murphey Candler
Chesnut
Dresden
Dunaire
Evansdale
Fernbank
Forrest Hills
Hambrick
Hawthorne
Henderson Mill
Hightower
Huntley Hills
Idlewood
Jolly
Kingsley
Knollwood
Laurel Ridge
Livsey
McLendon
Mainstreet
Medlock
Midvale
Montclair
Montgomery
Nancy Creek
Oakcliff
Oak Grove
Pleansantdale
Redan
Cary Reynolds
Rockbridge
Rock Chapel
Rowland
Sagamore Hills
Smoke Rise
Stone Mill
Stone Mountain
Vanderlyn
Woodbridge
Woodward

TYPE II SCHOOLS
(White 1976, Black 1986):

Atherton
Avondale
Canby Lane
Chapel Hill
Cedar Grove
Fairington
Glen Haven
Indian Creek
Bob Mathis
Midway
Peachcrest
Rainbow
Snapfinger
Stoneview

TYPE III SCHOOLS
(Long-Term Black):

Hooper Alexander
Clifton
Columbia
Flat Shoals
Gresham Park
Kelley Lake
Knollwood
Meadowview
Sky Haven
Leslie Steele
Terry Mill
Tilson
Toney
Wadsworth

DEKALB COUNTY HIGH SCHOOLS, BY TYPE

TYPE I SCHOOLS
(Long-Term White):

Chamblee
Clarkston
Cross Keys
Druid Hills
Dunwoody
Henderson
Lakeside
Lithonia
Peachtree
Redan
Sequoyah
Shamrock
Stone Mountain
Tucker

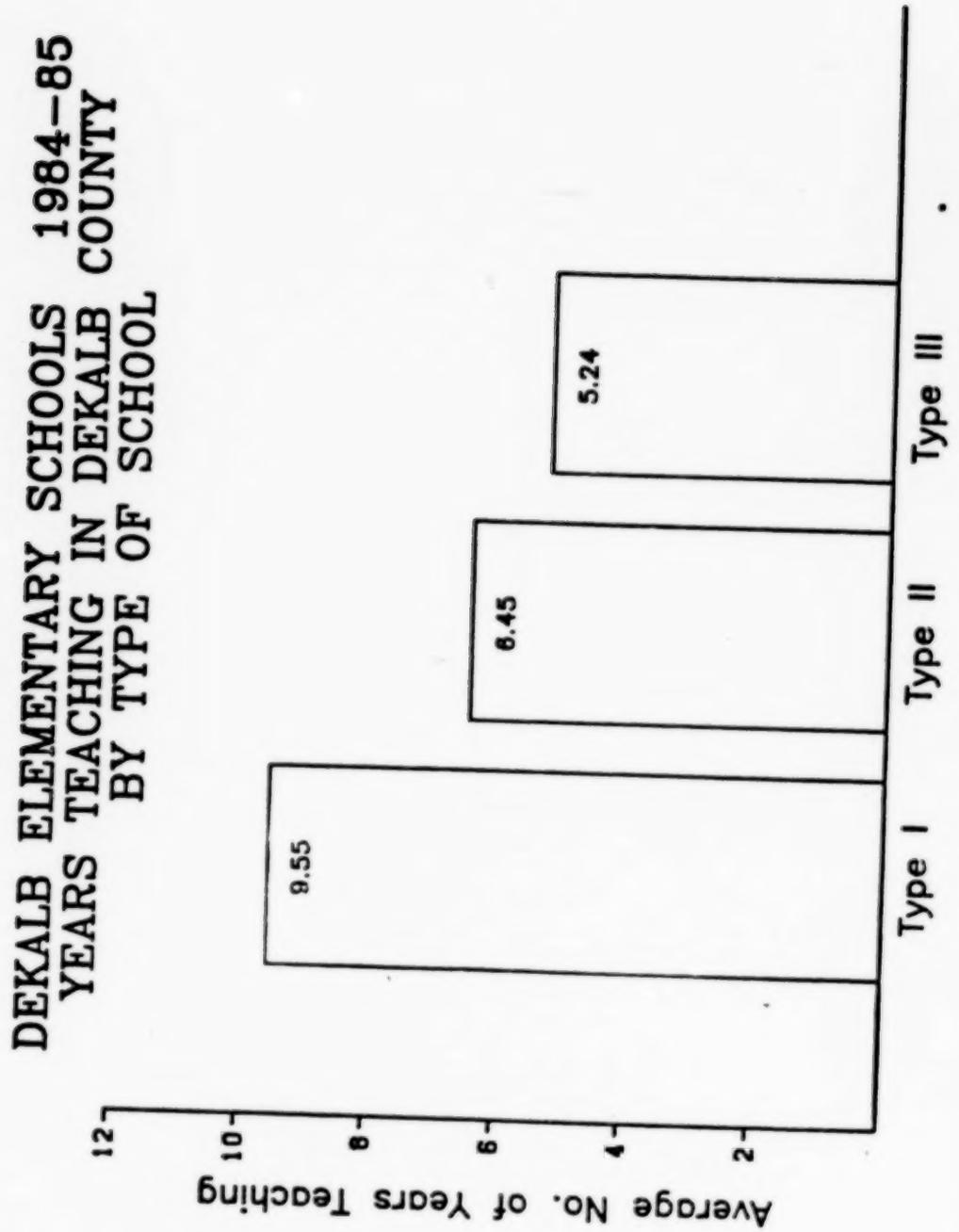
TYPE II SCHOOLS
(White 1976, Black, 1986):

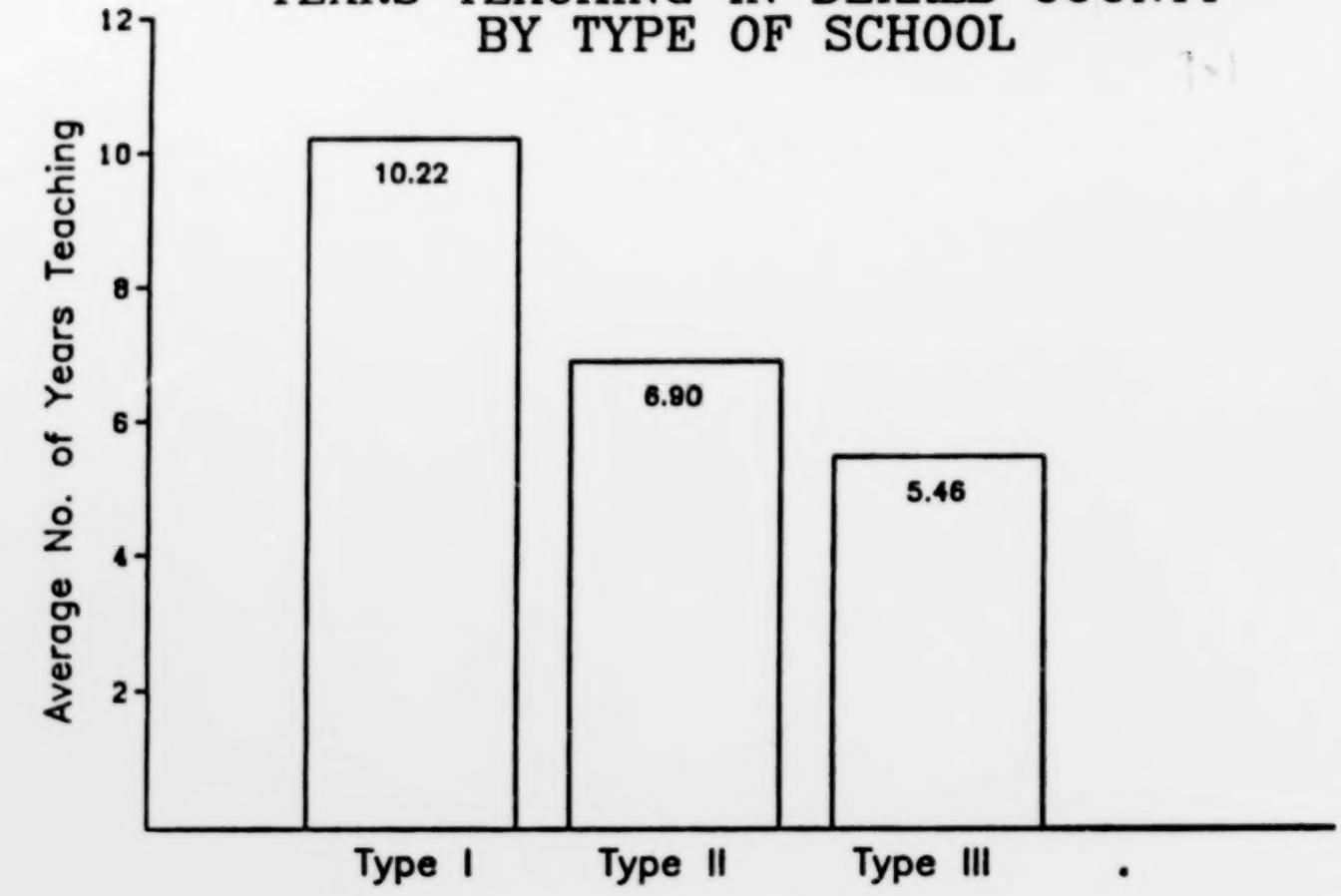
Avondale
Briarcliff
Cedar Grove
Southwest DeKalb
Towers

TYPE III SCHOOLS
(Long-Term Black):

Columbia
Gordon
Walker

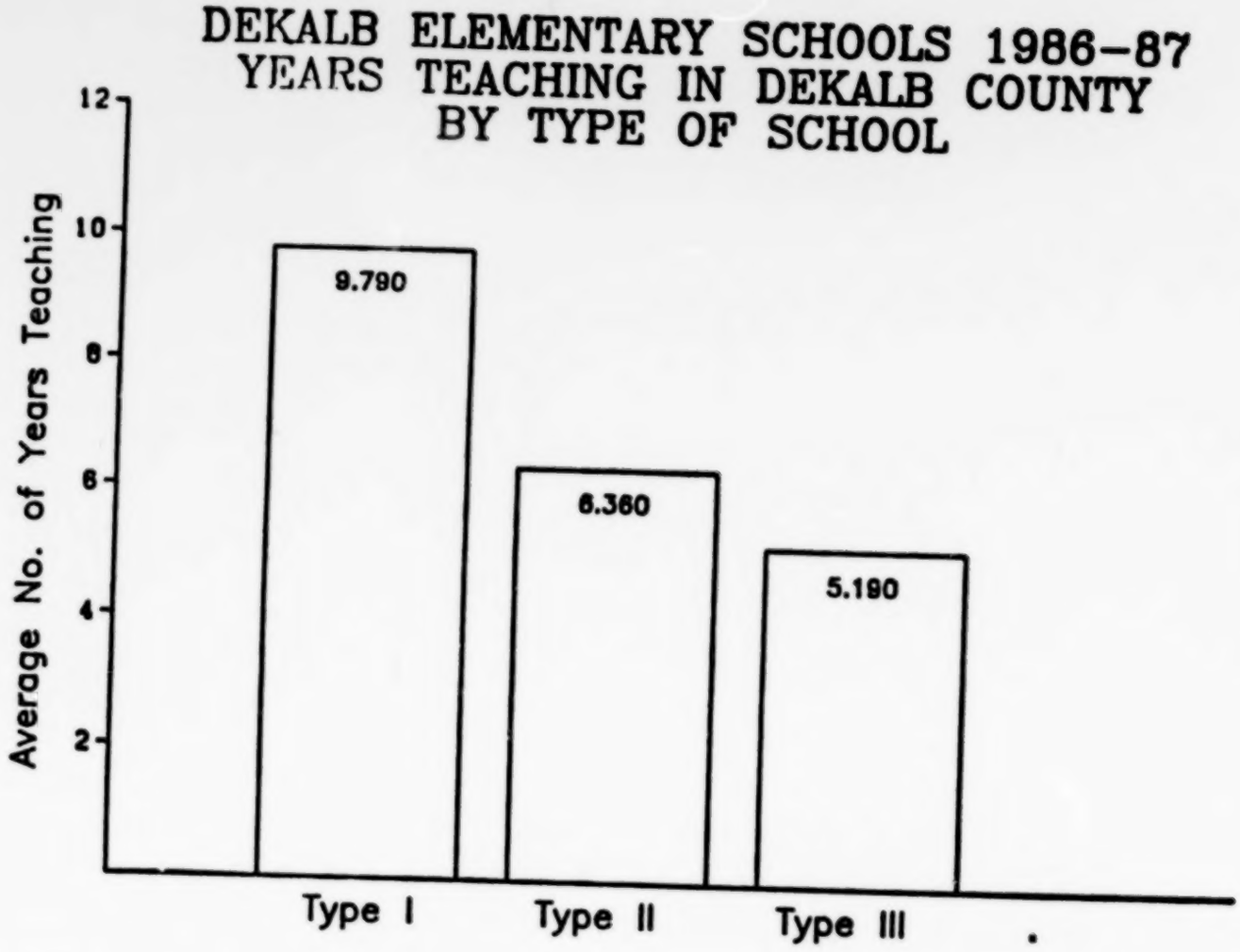
PLAINTIFF'S EXHIBIT 97a





PLAINTIFF'S EXHIBIT 97b

512



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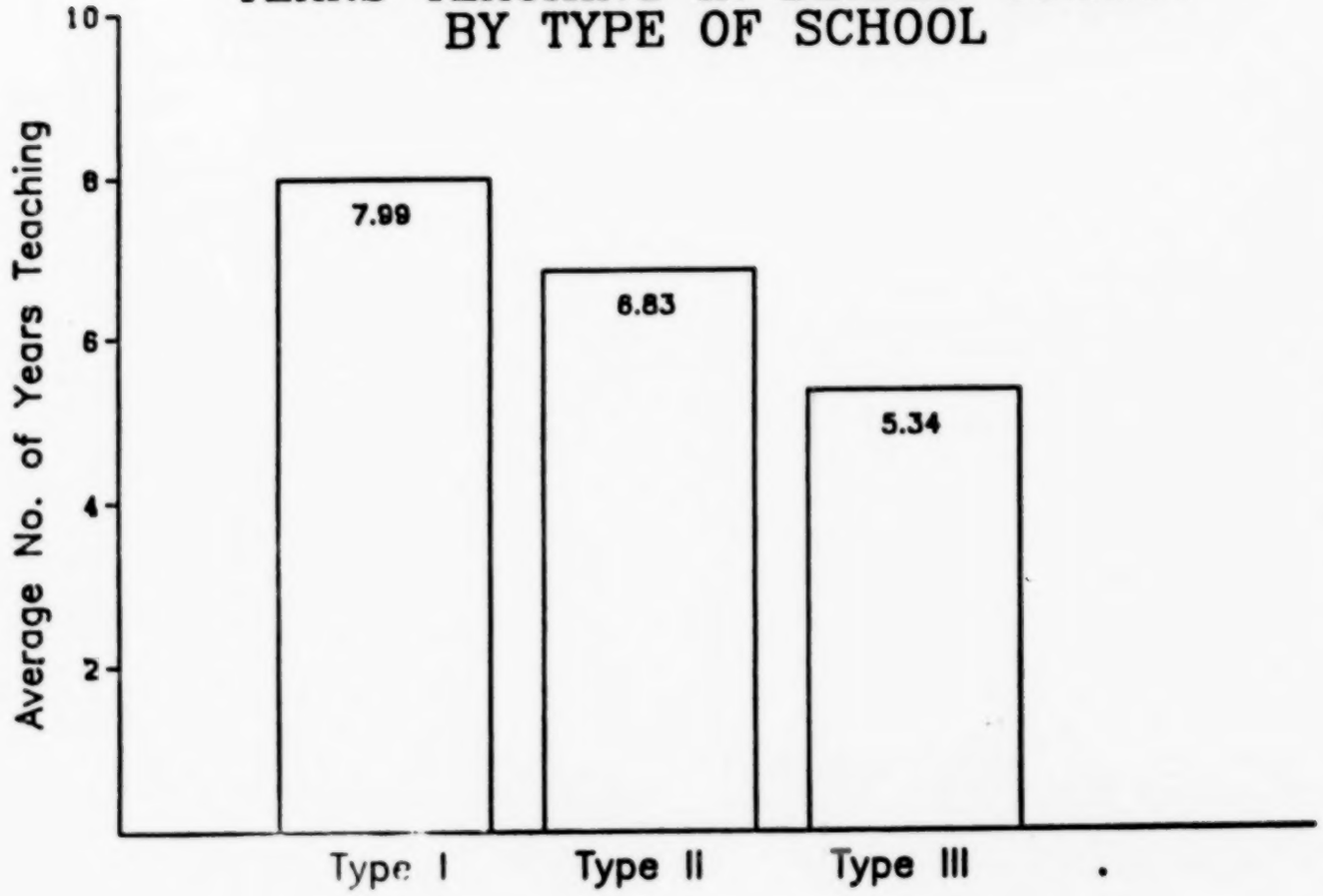
513



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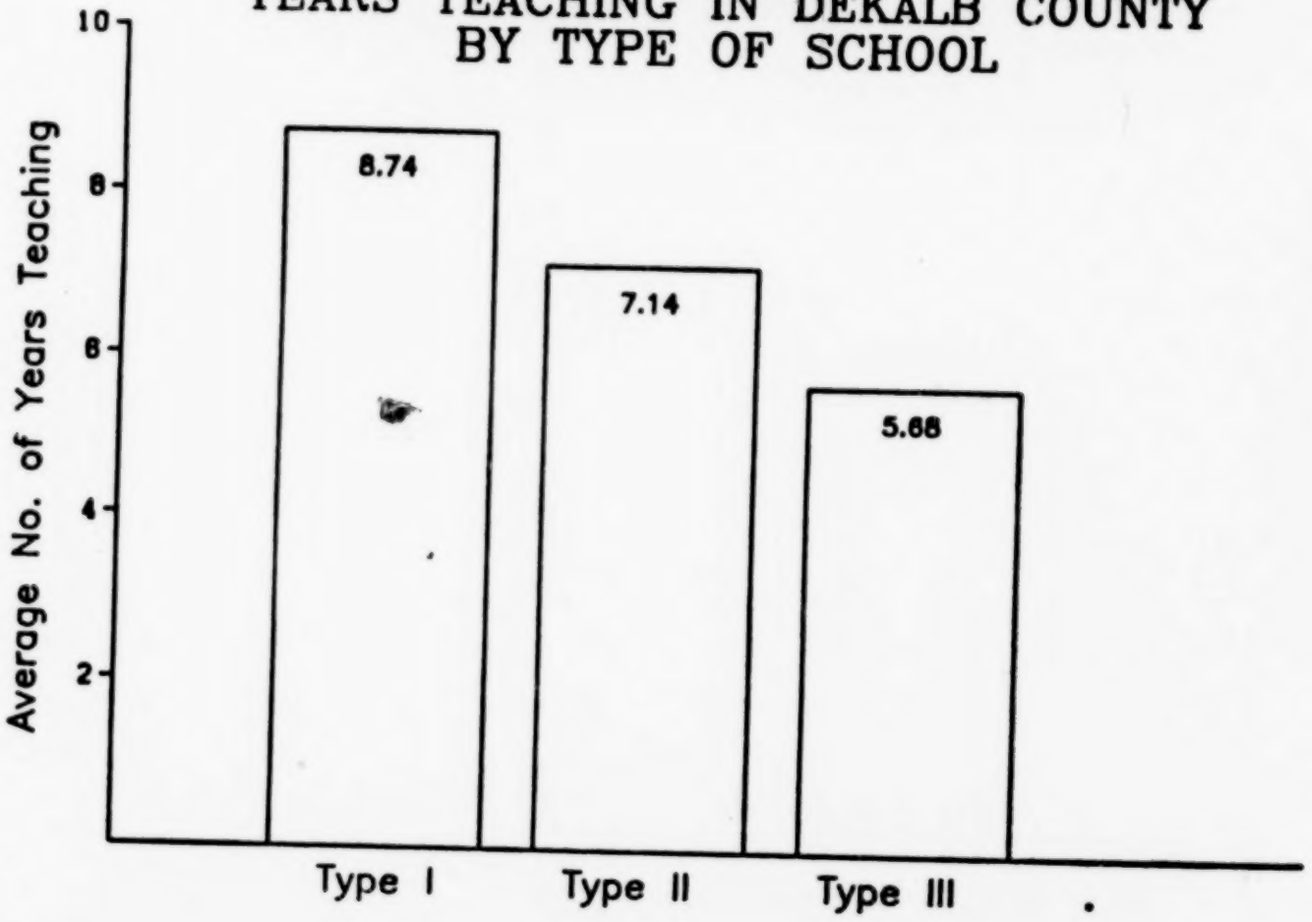

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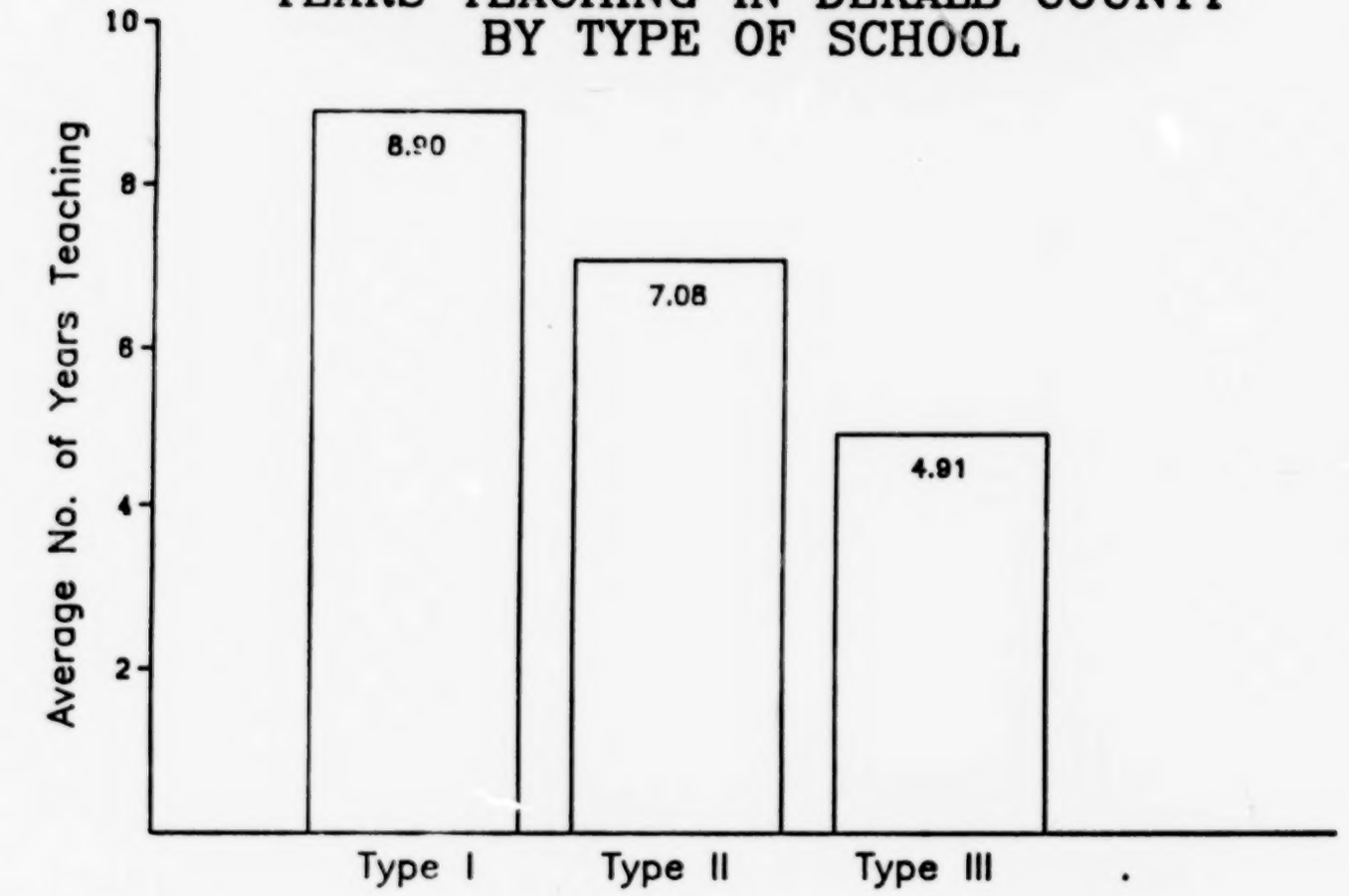
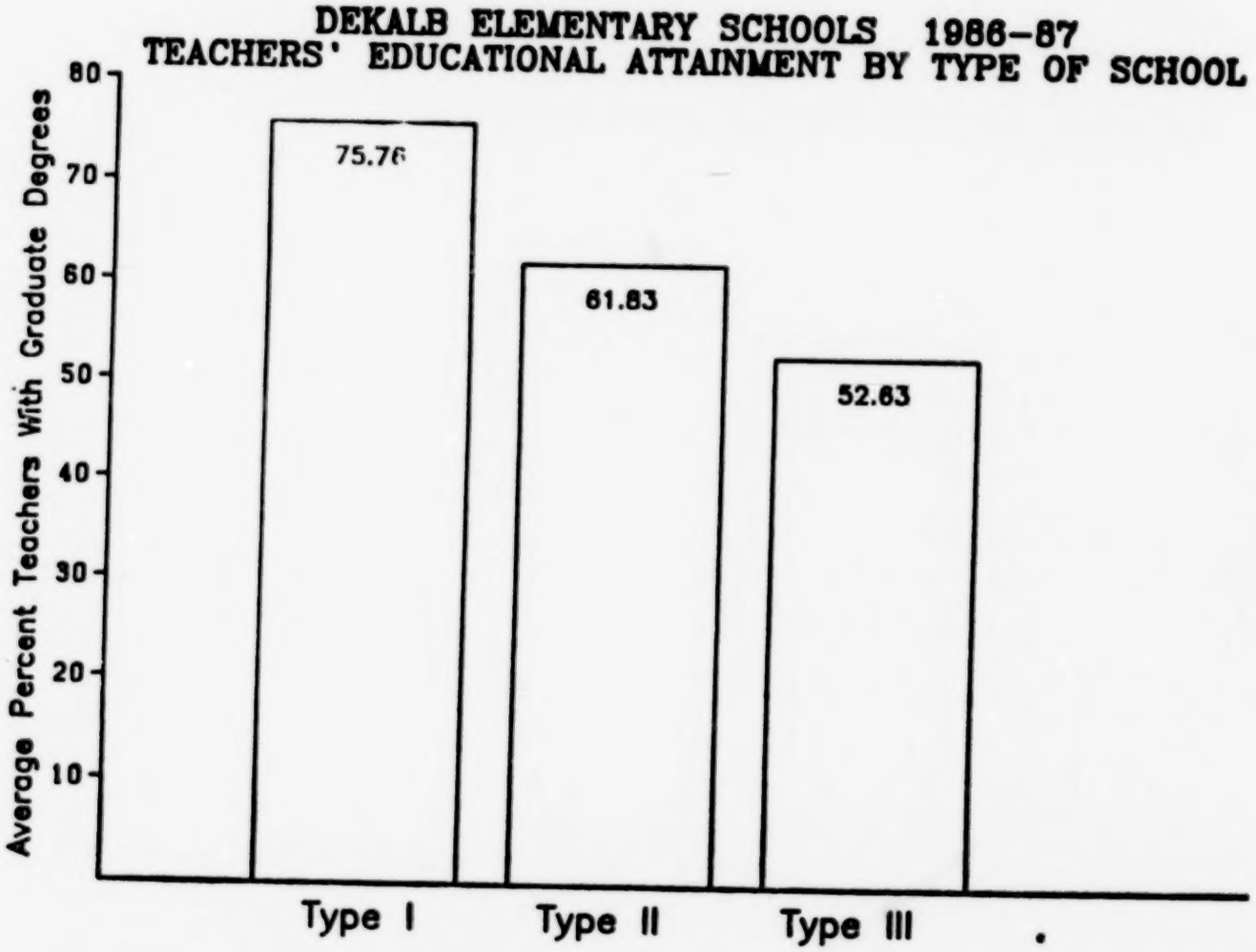
515



PLAINTIFF'S EXHIBIT 98c

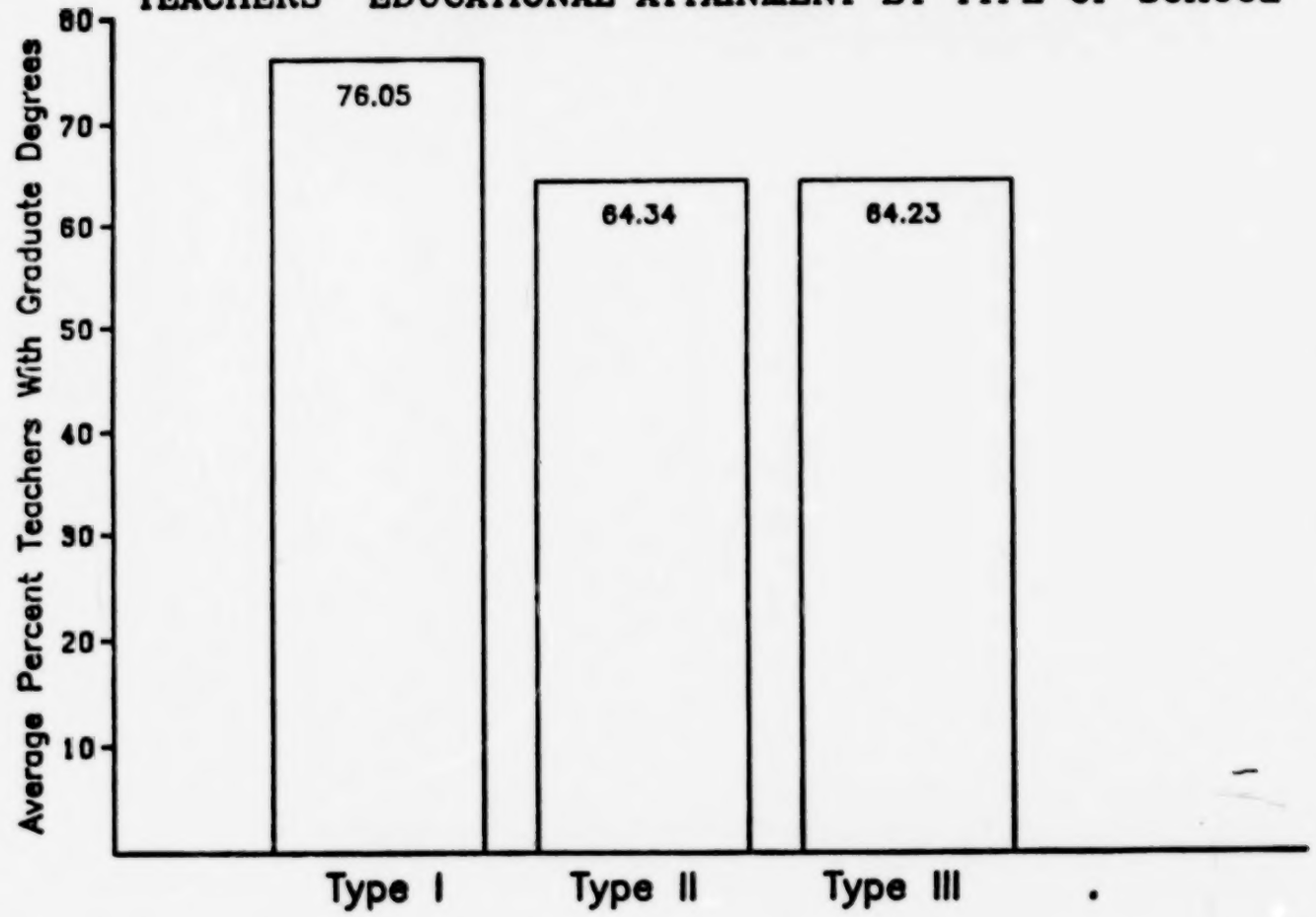
516



PLAINTIFF'S EXHIBIT 99

517

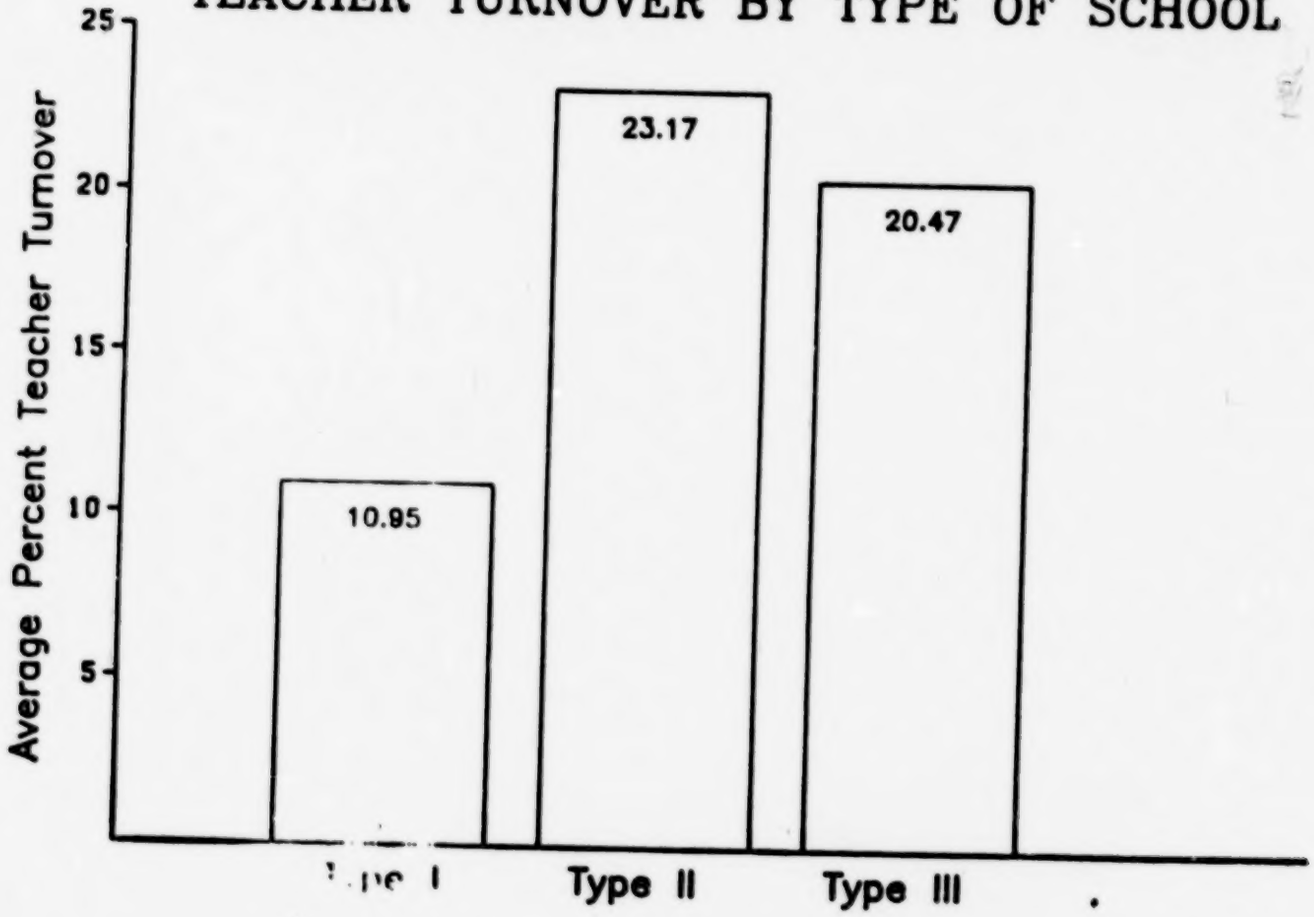
DEKALB HIGH SCHOOLS 1986-87
TEACHERS' EDUCATIONAL ATTAINMENT BY TYPE OF SCHOOL



PLAINTIFF'S EXHIBIT 100

518

DEKALB ELEMENTARY SCHOOLS 1984-85
TEACHER TURNOVER BY TYPE OF SCHOOL

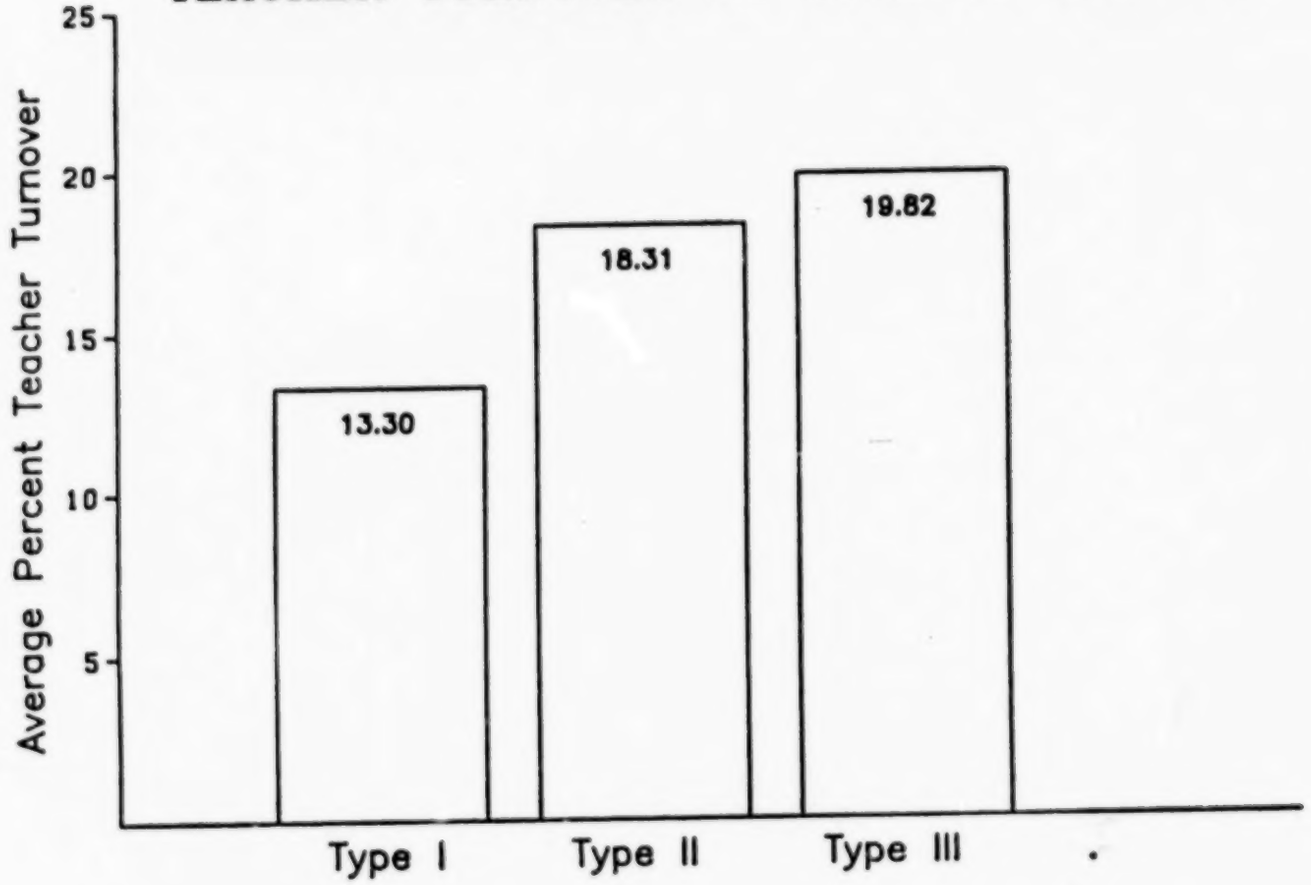


PLAINTIFF'S EXHIBIT 101a

519

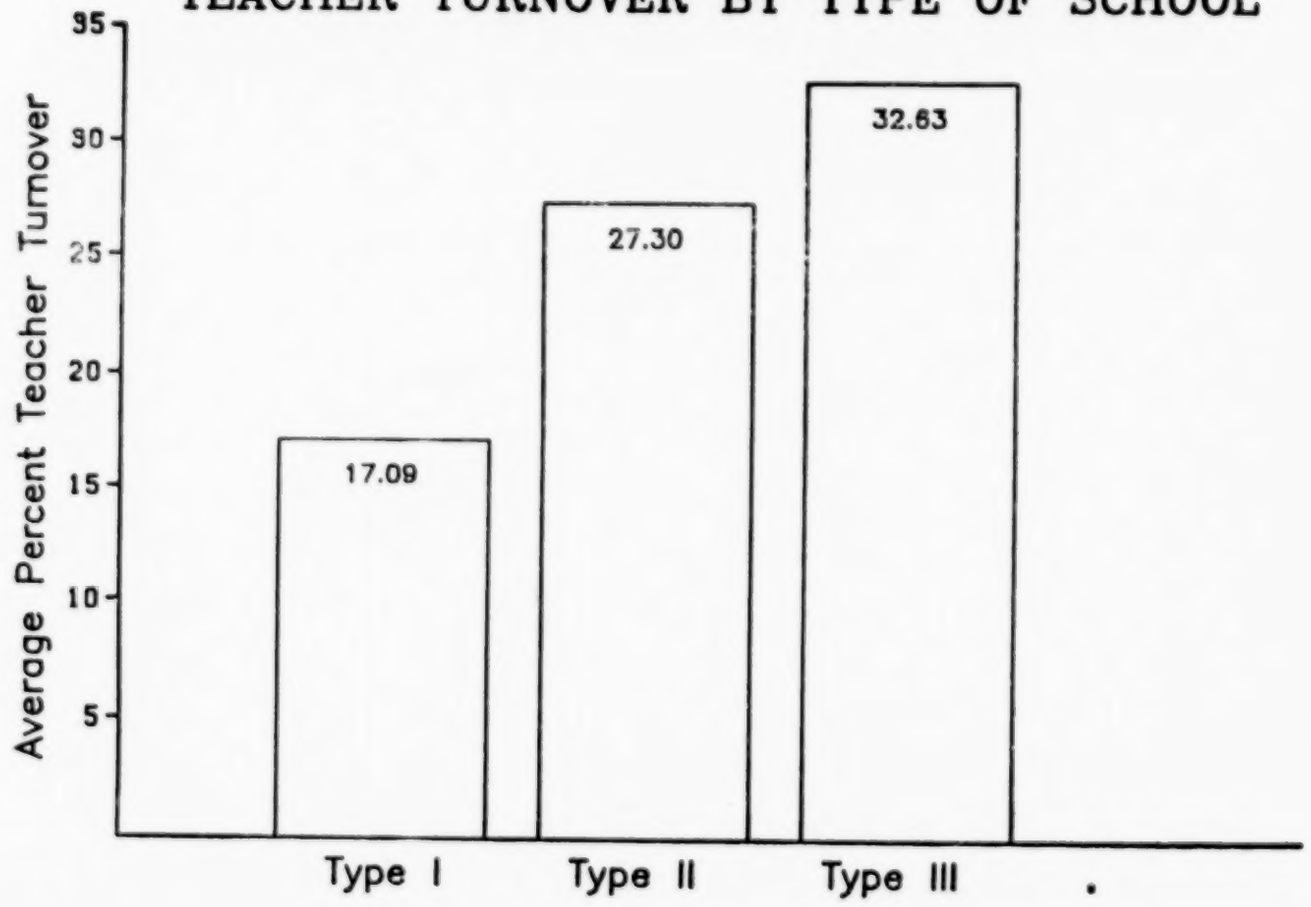
PLAINTIFF'S EXHIBIT 101b

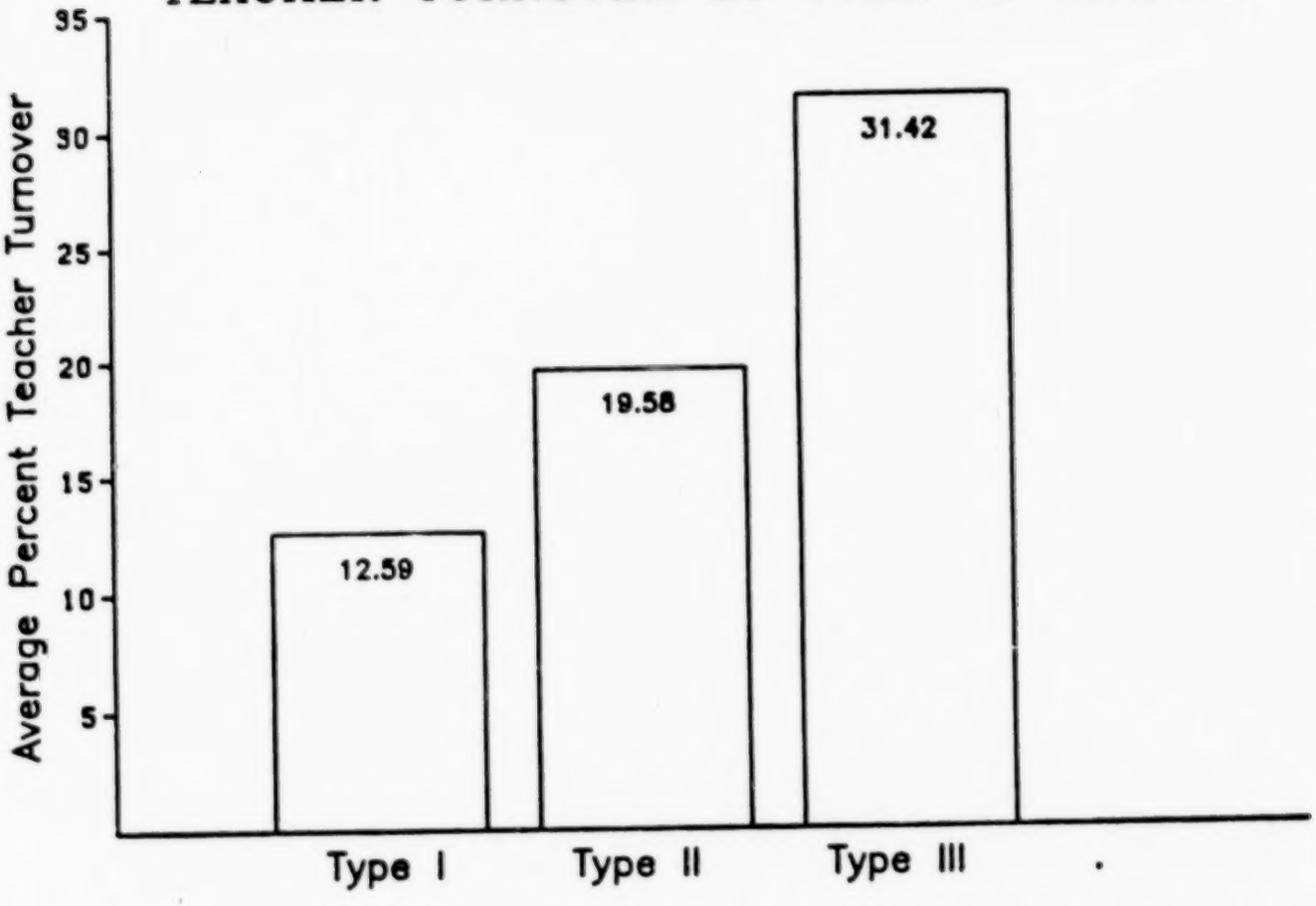
DEKALB ELEMENTARY SCHOOLS 1985-86
TEACHER TURNOVER BY TYPE OF SCHOOL



PLAINTIFF'S EXHIBIT 102a

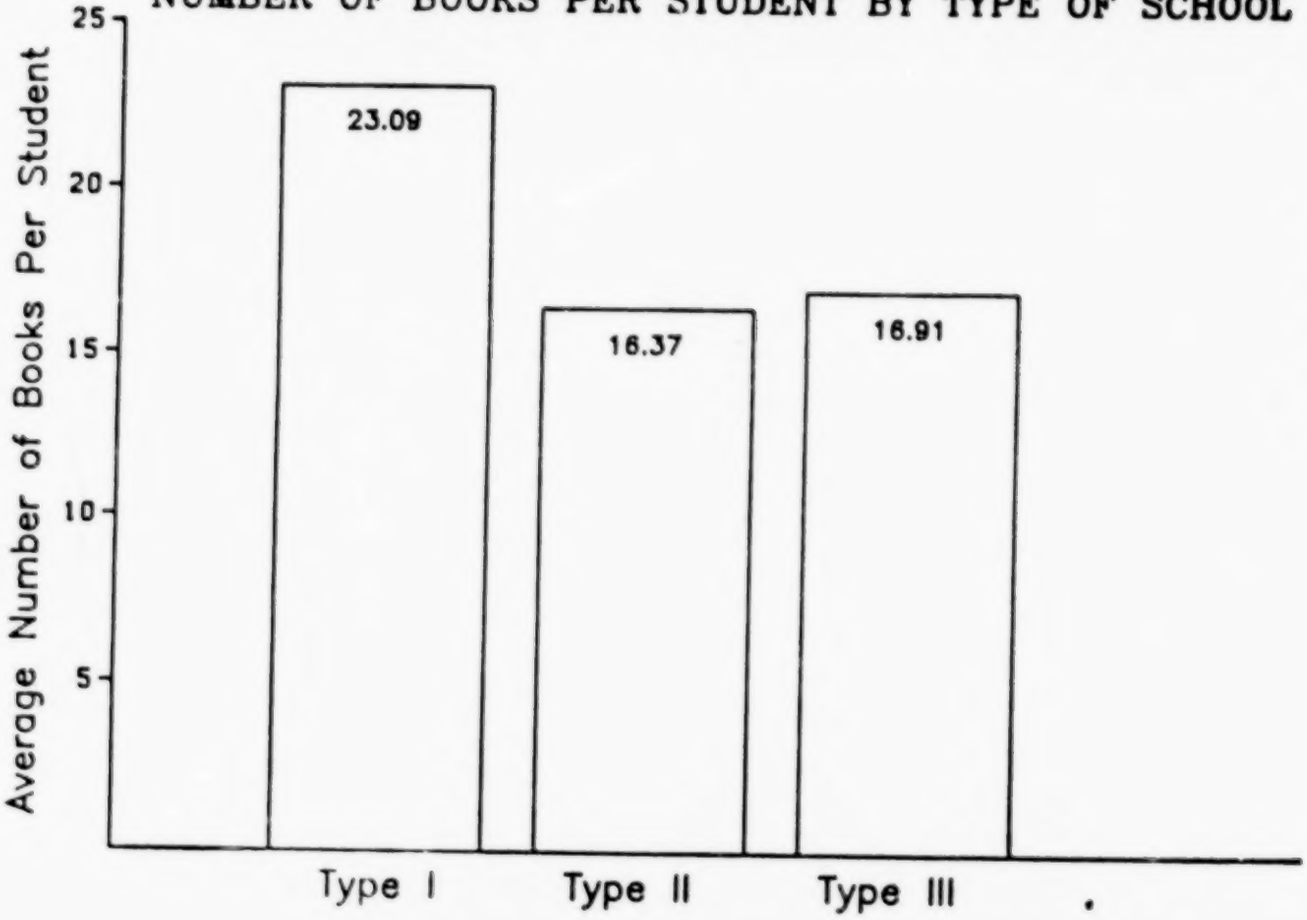
DEKALB HIGH SCHOOLS 1984-85
TEACHER TURNOVER BY TYPE OF SCHOOL





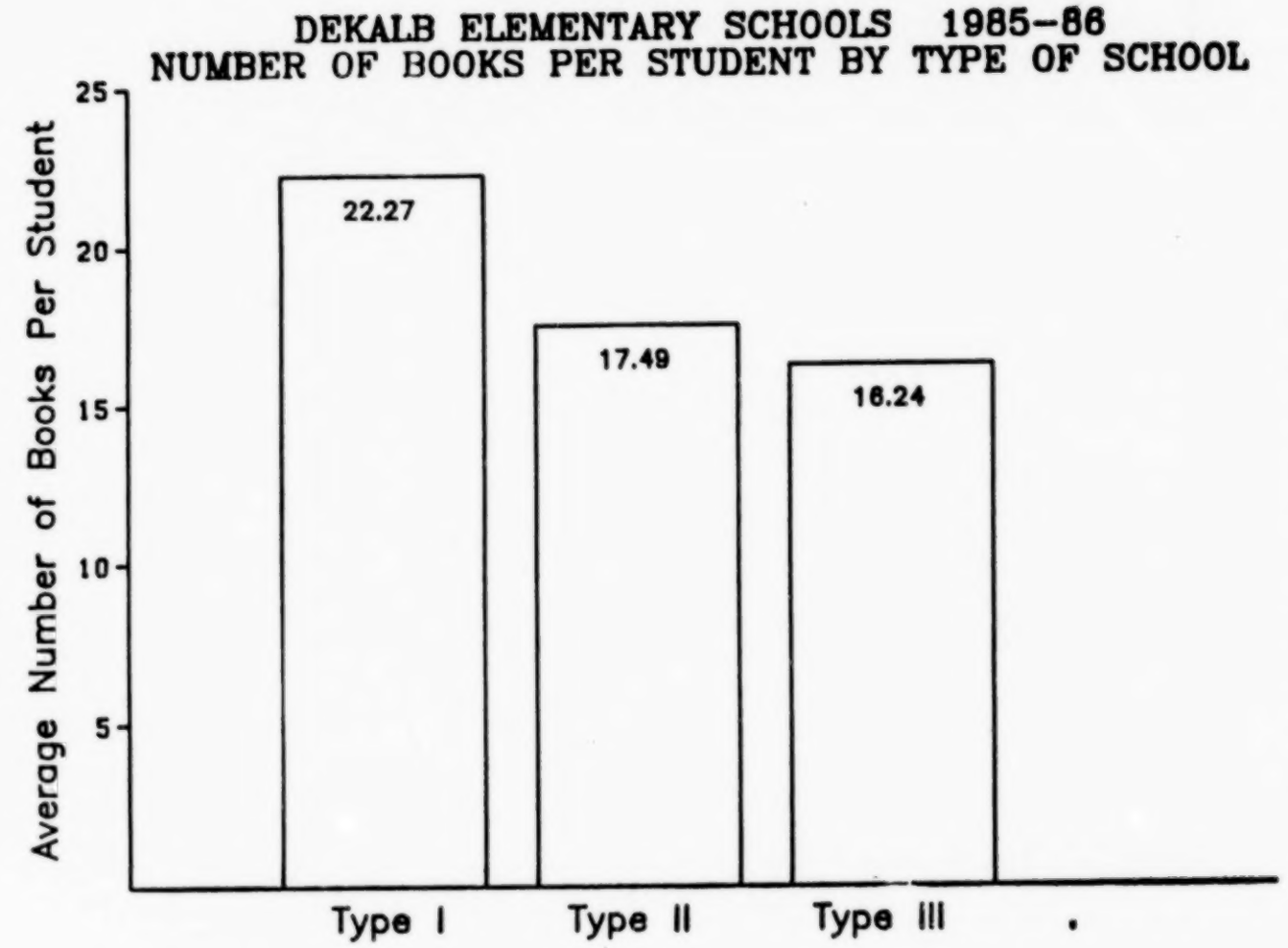
PLAINTIFF'S EXHIBIT 102b

522



PLAINTIFF'S EXHIBIT 103a

523



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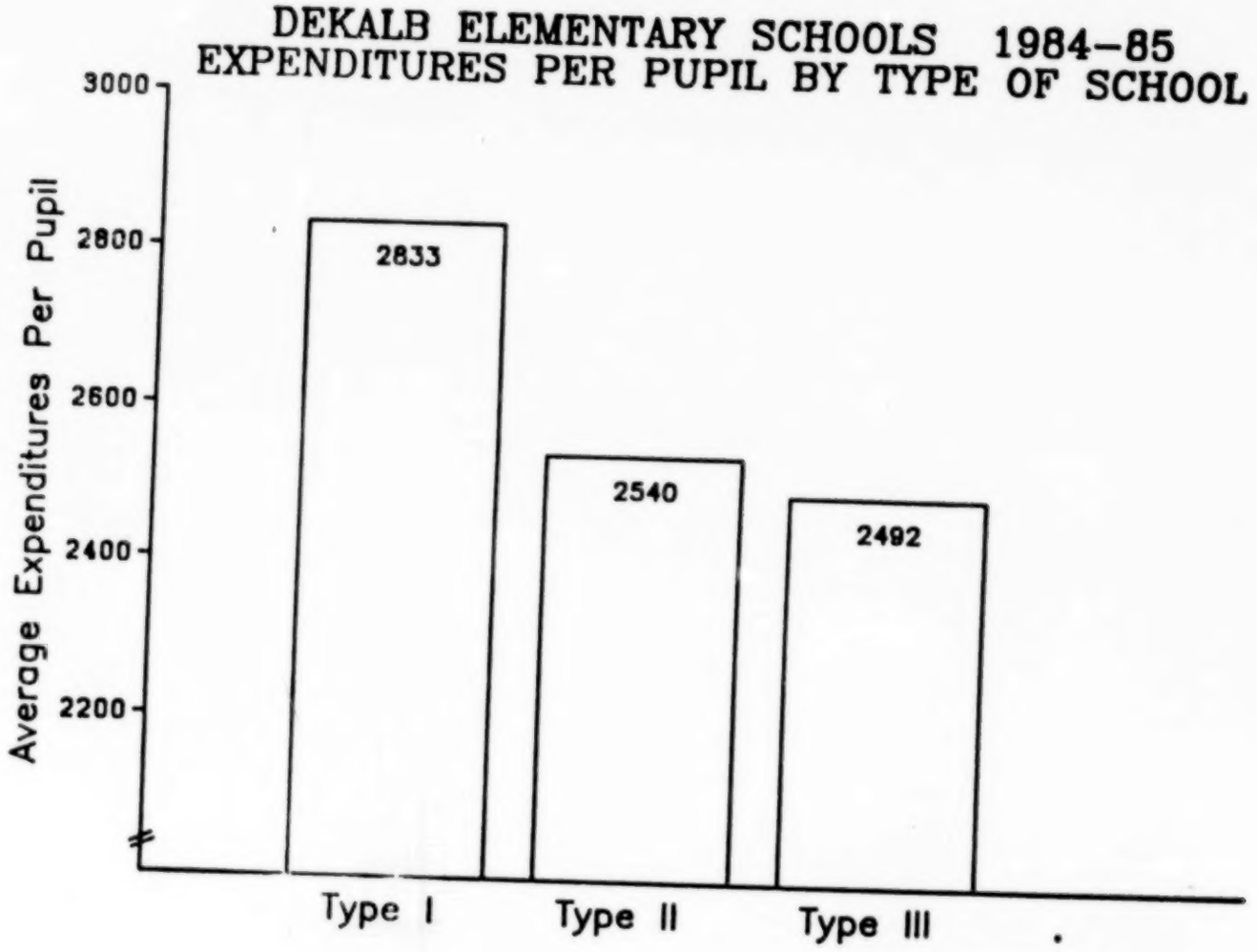
524

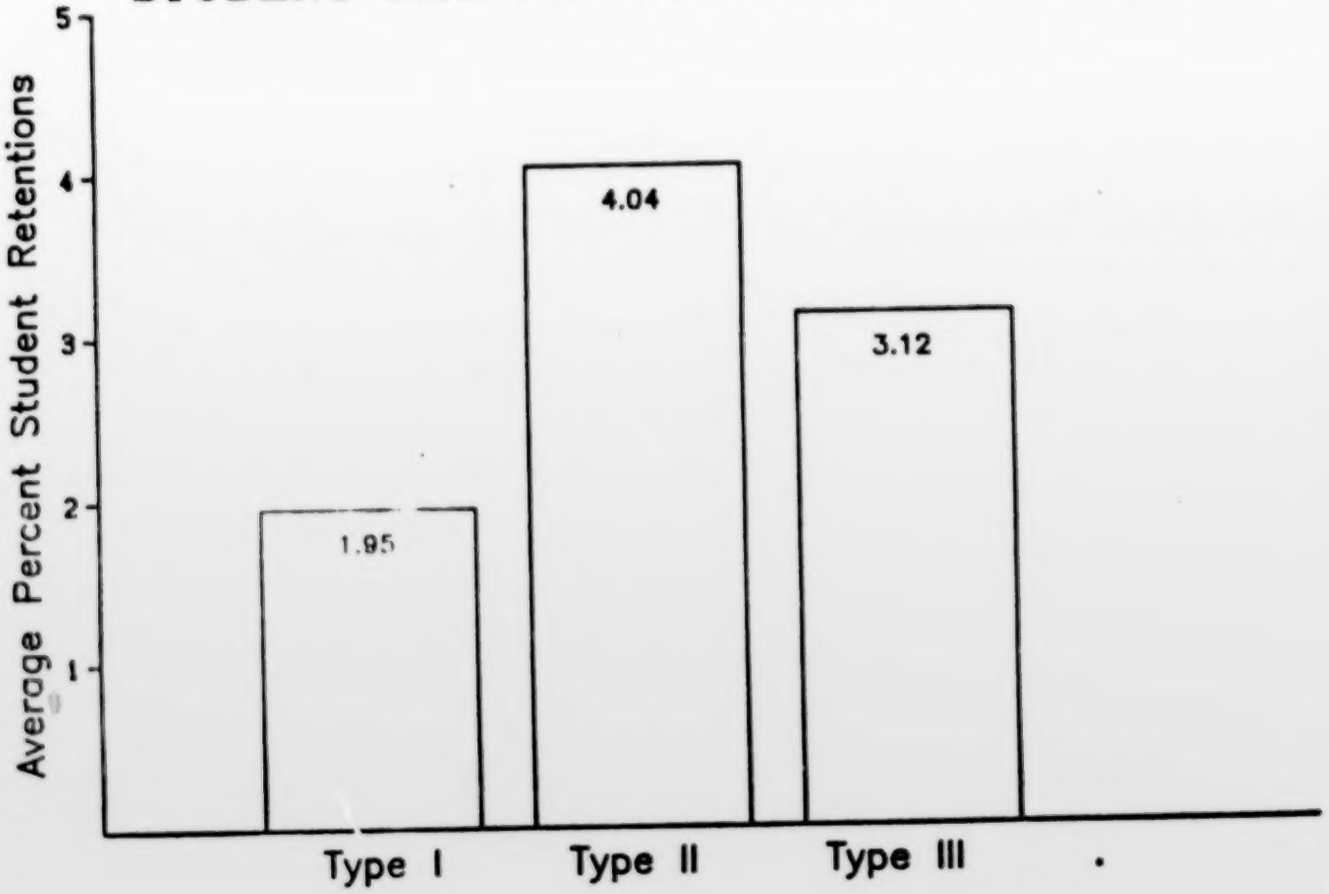


PLAINTIFF'S EXHIBIT 104

525

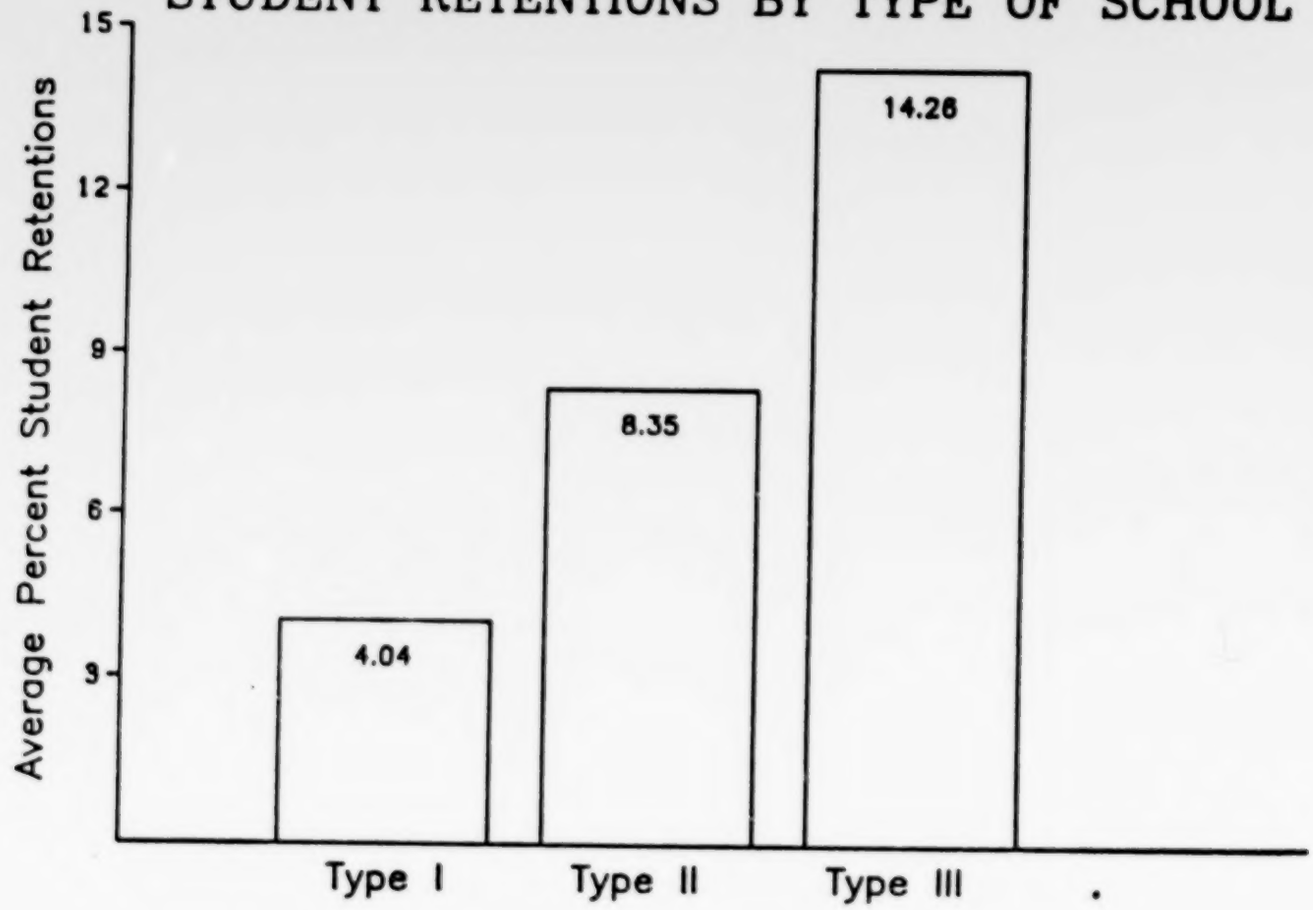
PLAINTIFF'S EXHIBIT 105

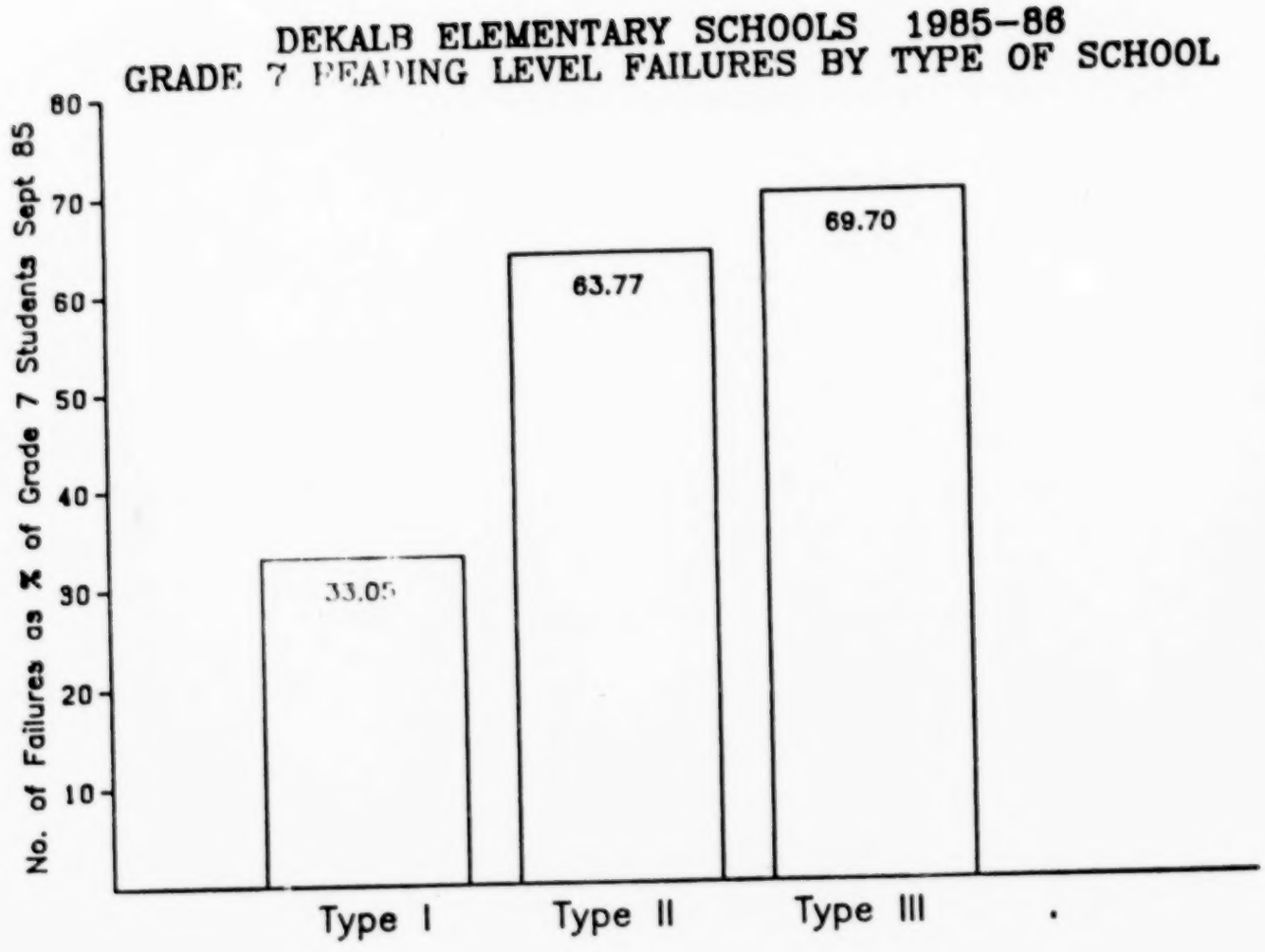
DEKALB ELEMENTARY SCHOOLS 1984–85
STUDENT RETENTIONS BY TYPE OF SCHOOL



PLAINTIFF'S EXHIBIT 106

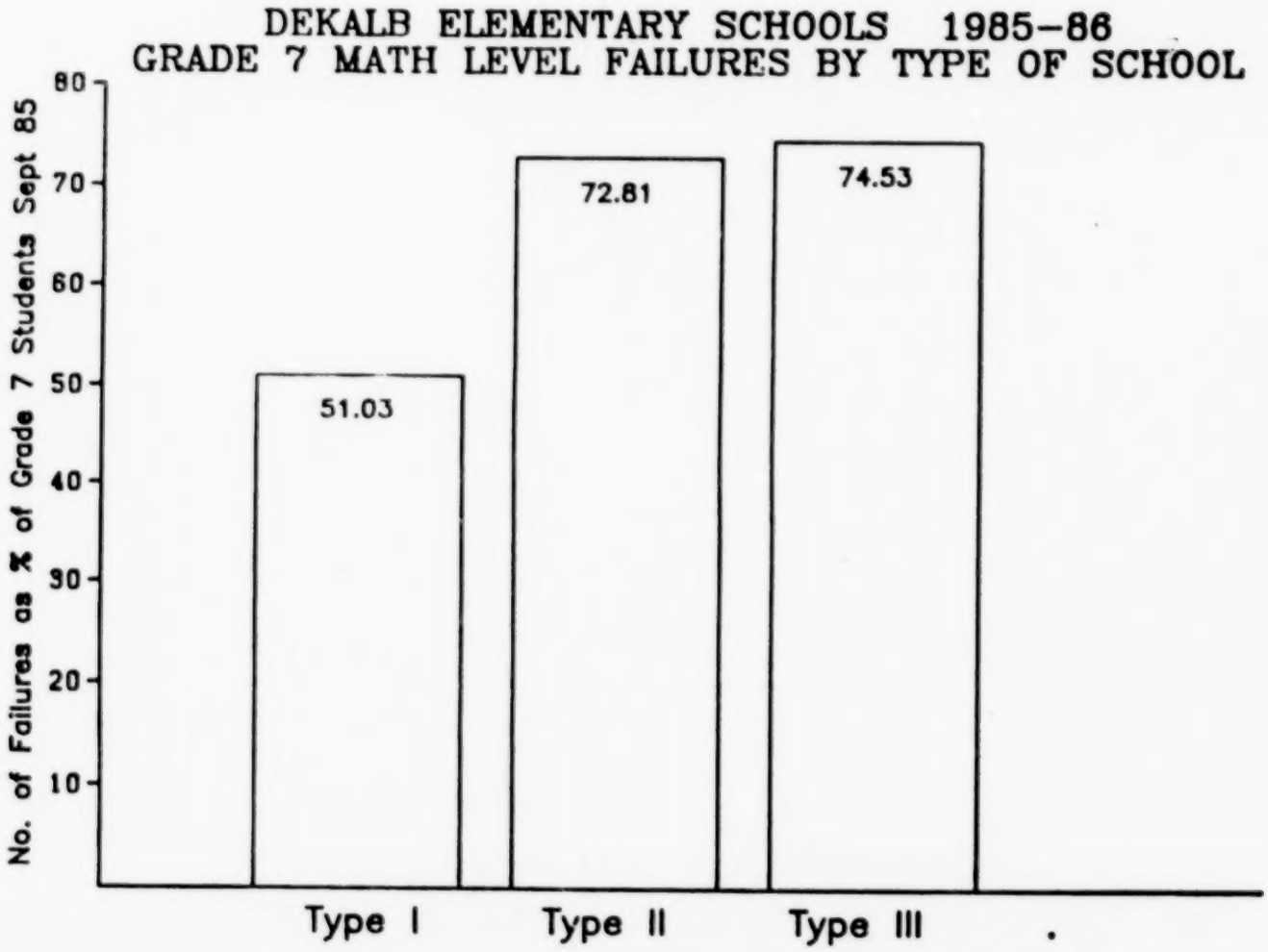
DEKALB HIGH SCHOOLS 1984–85
STUDENT RETENTIONS BY TYPE OF SCHOOL





PLAINTIFF'S EXHIBIT 107a

528



PLAINTIFF'S EXHIBIT 107b

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PLAINTIFF'S EXHIBIT 108a

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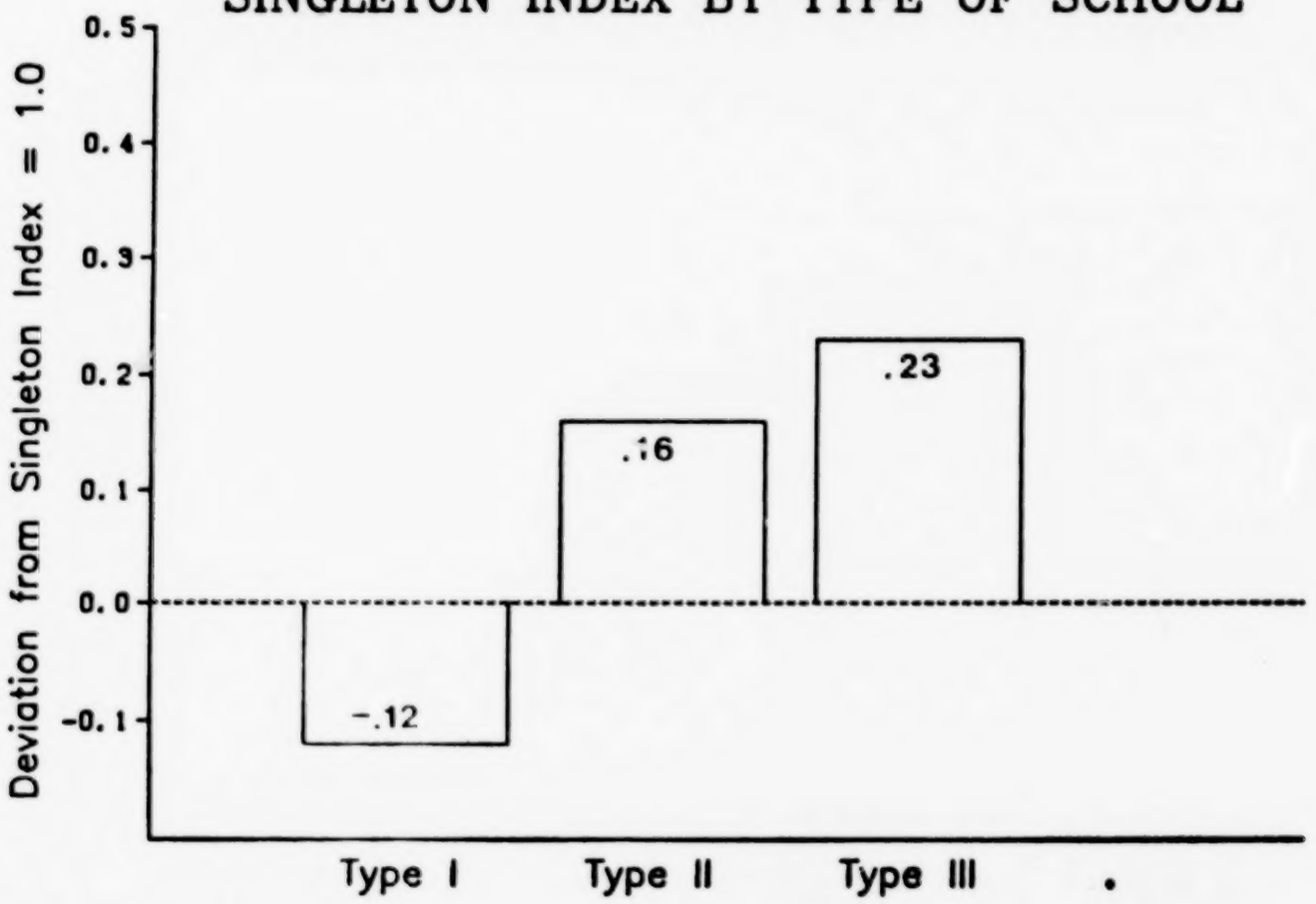

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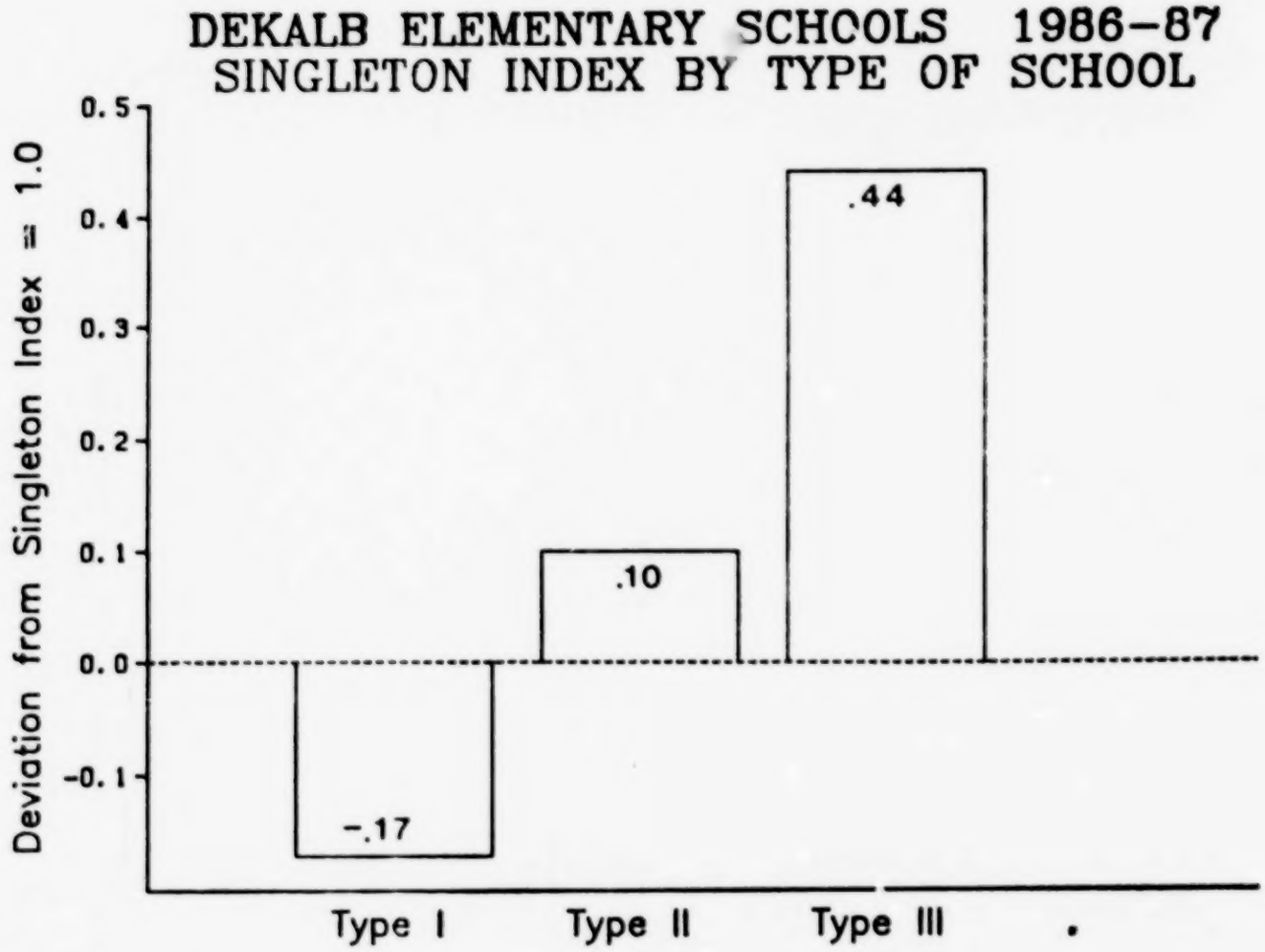

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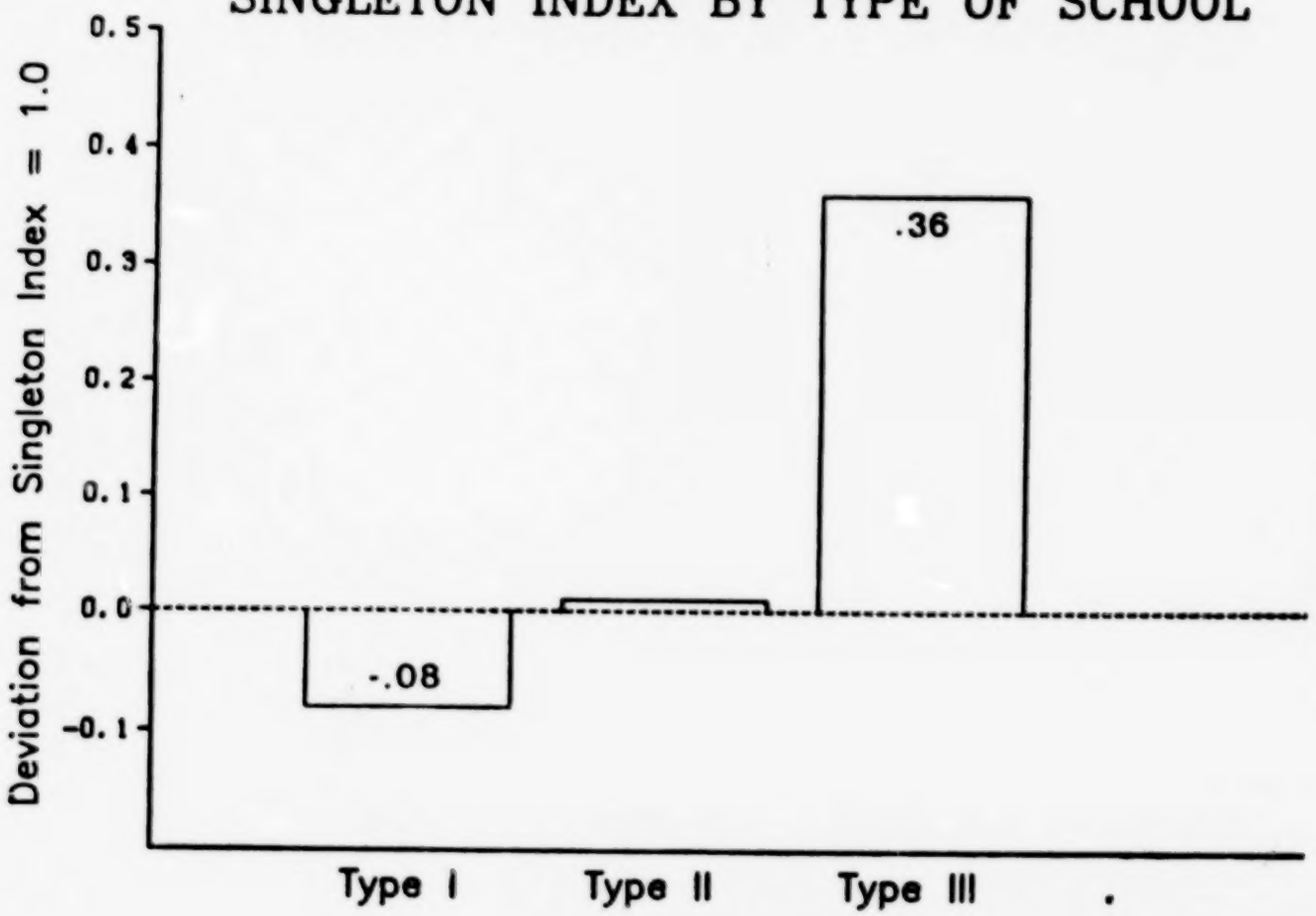

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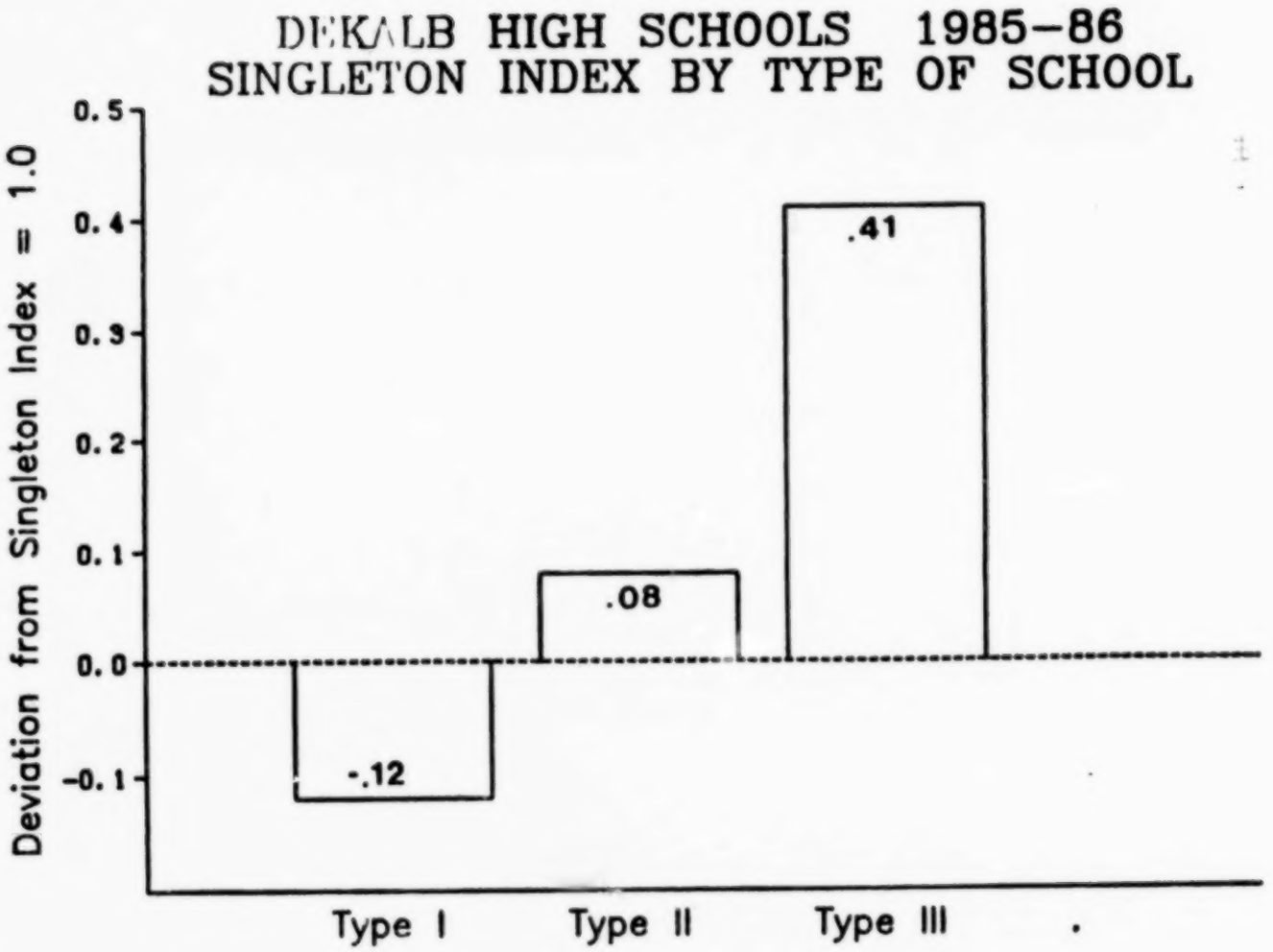

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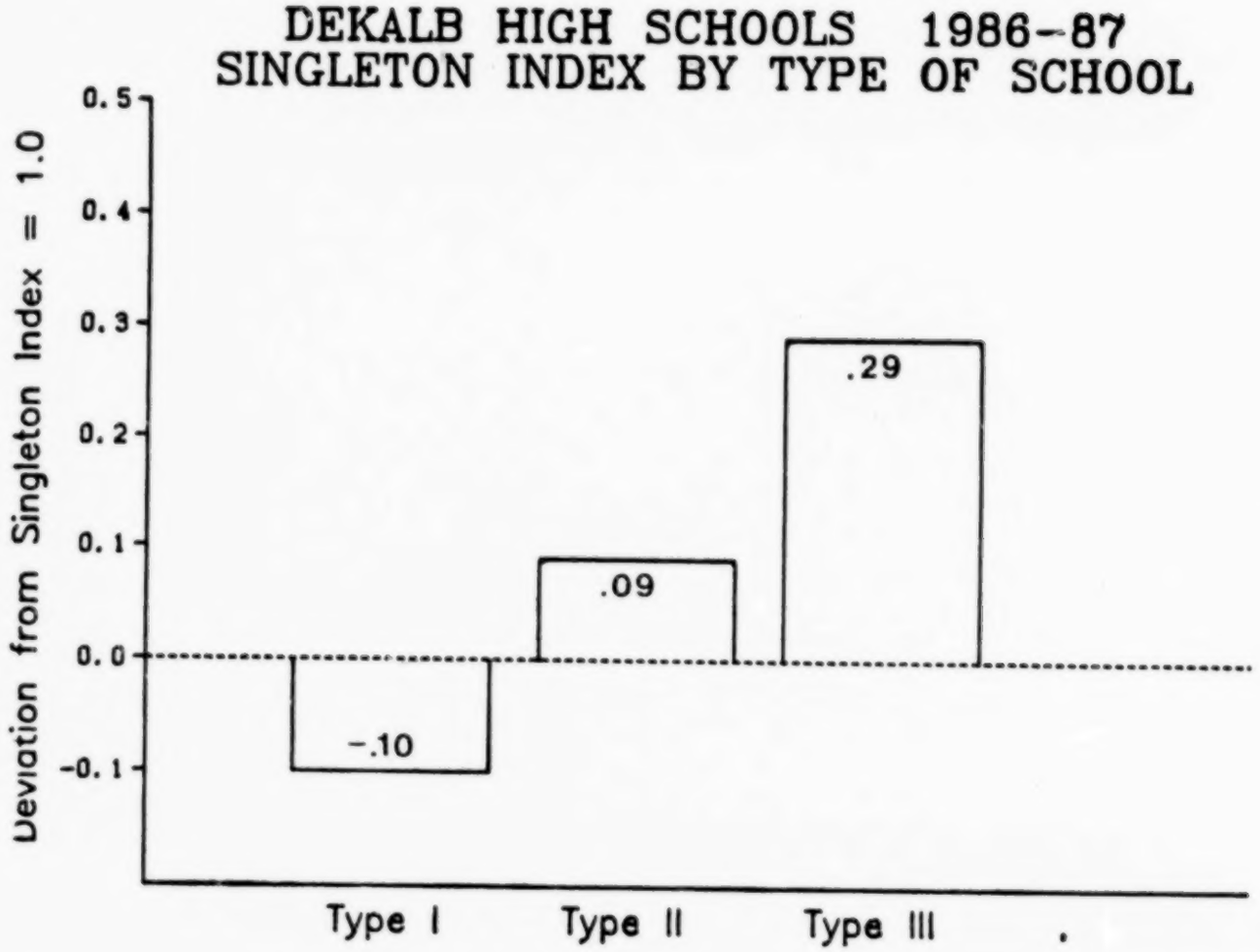

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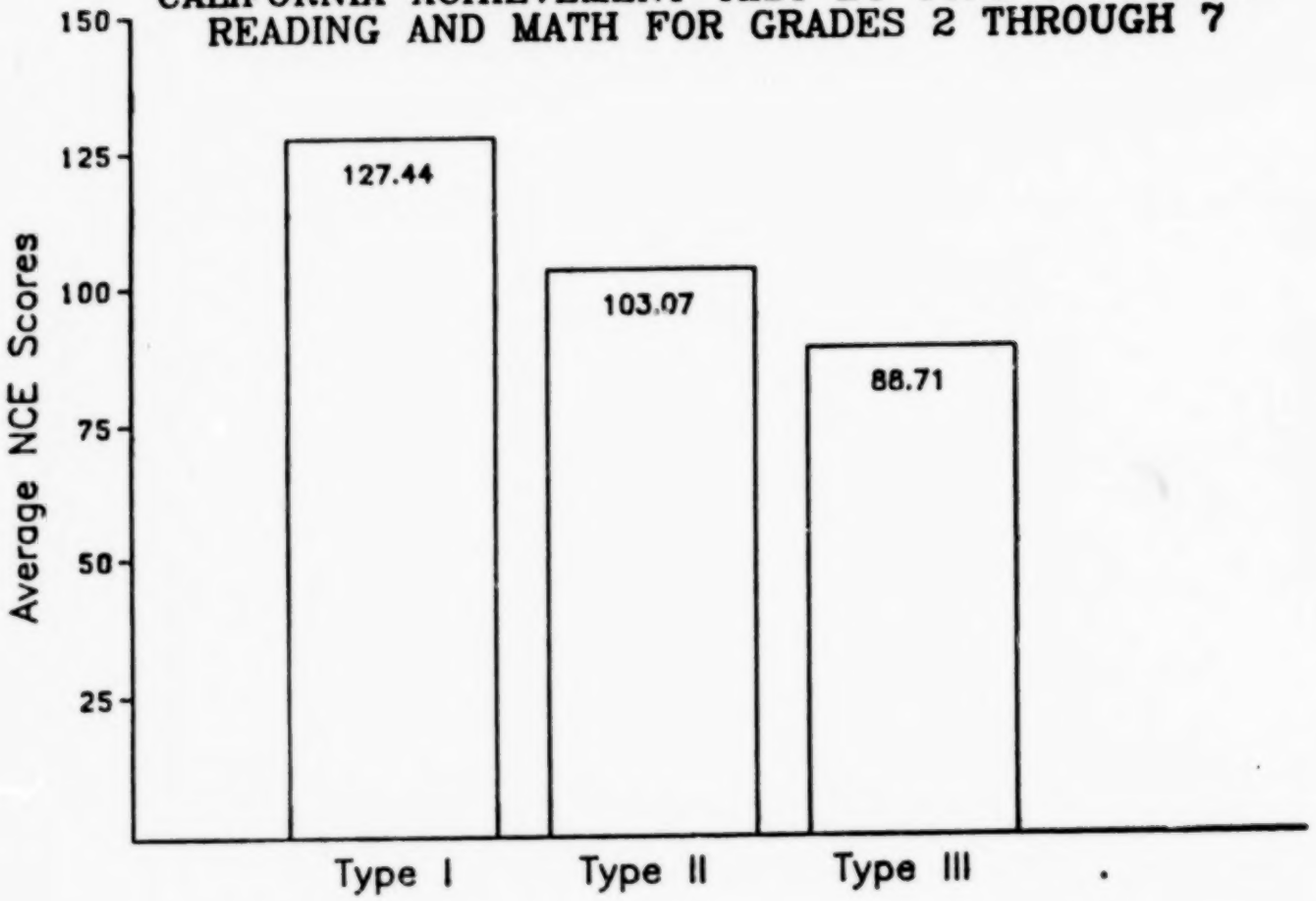

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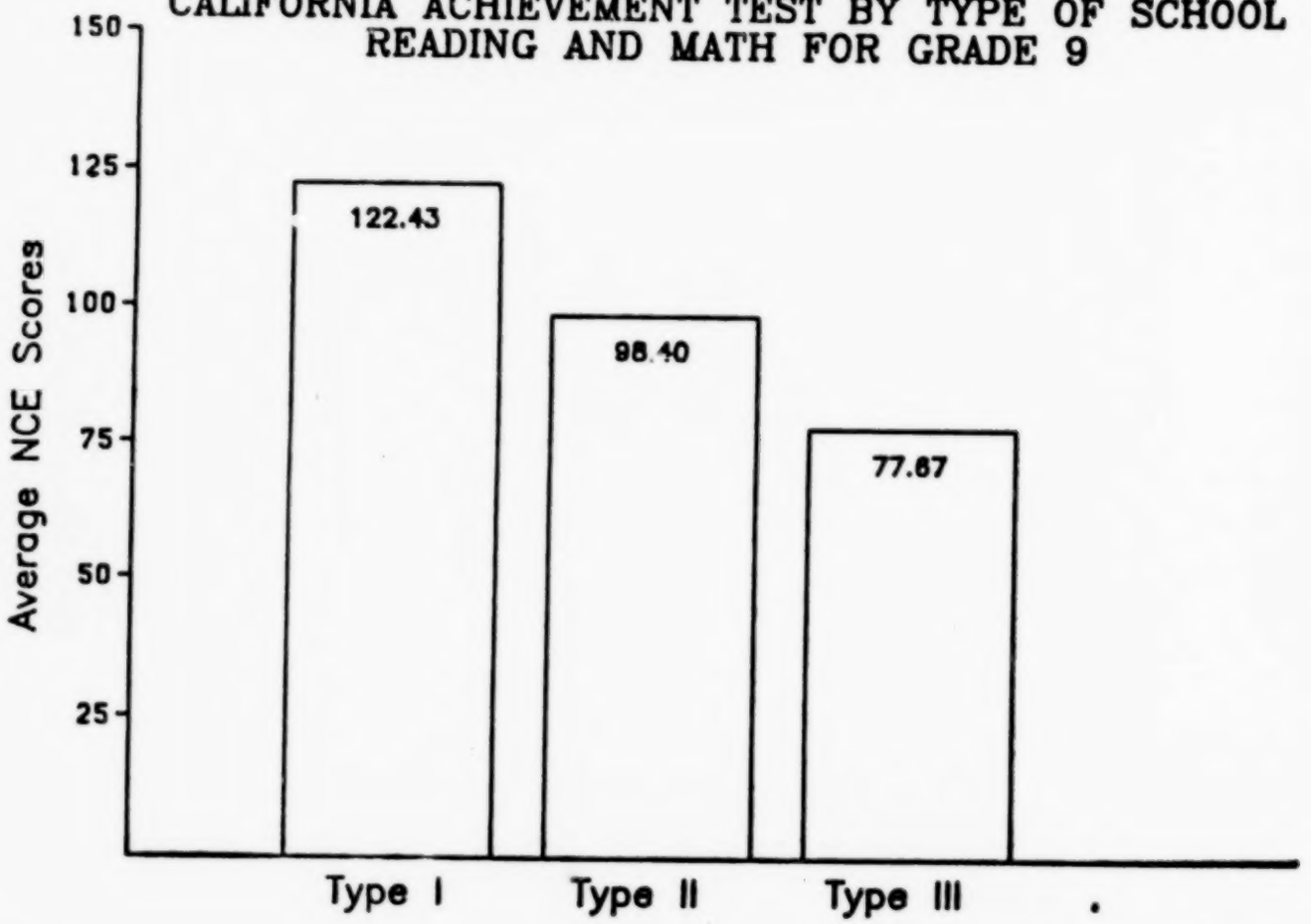
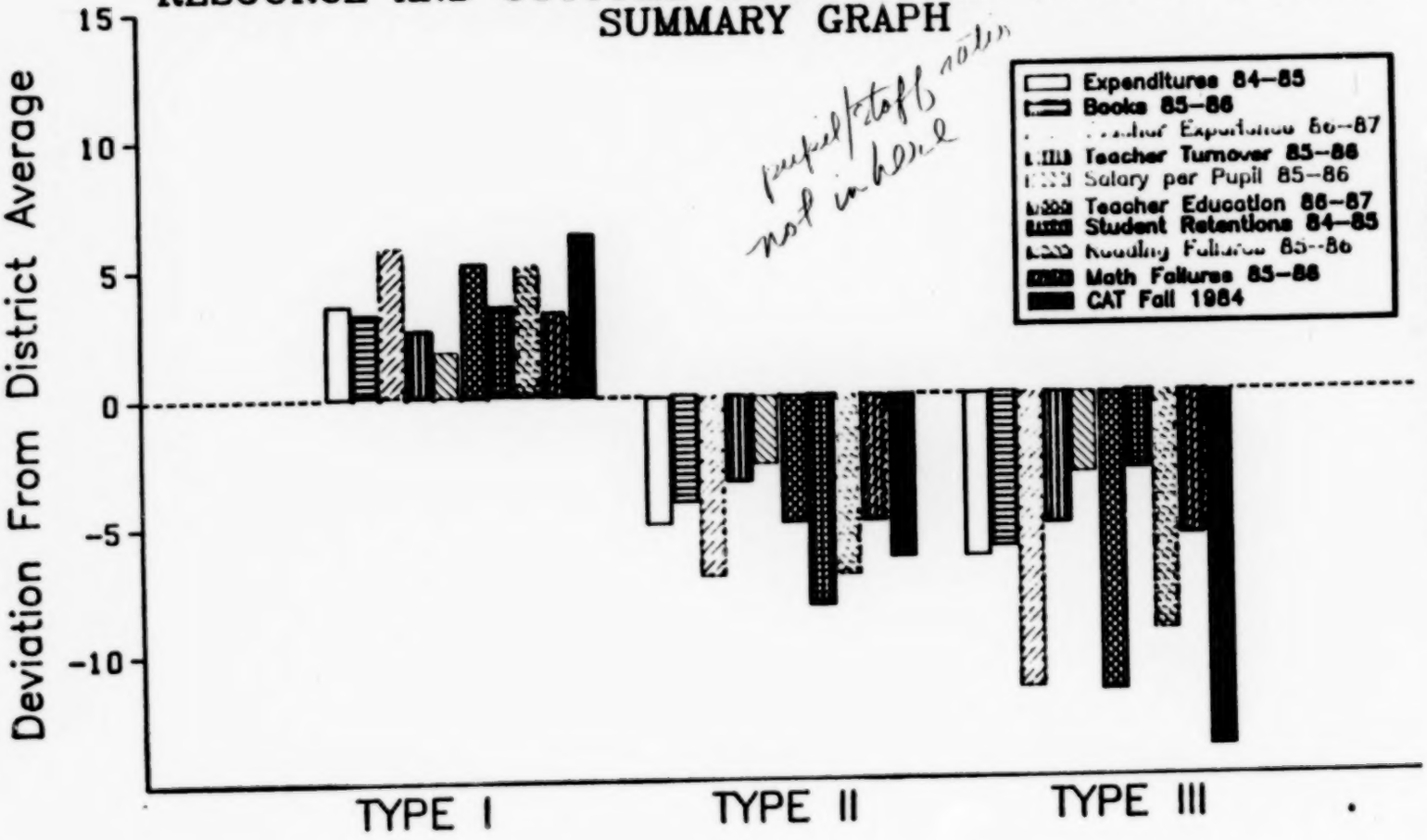


PLAINTIFF'S EXHIBIT 111

537

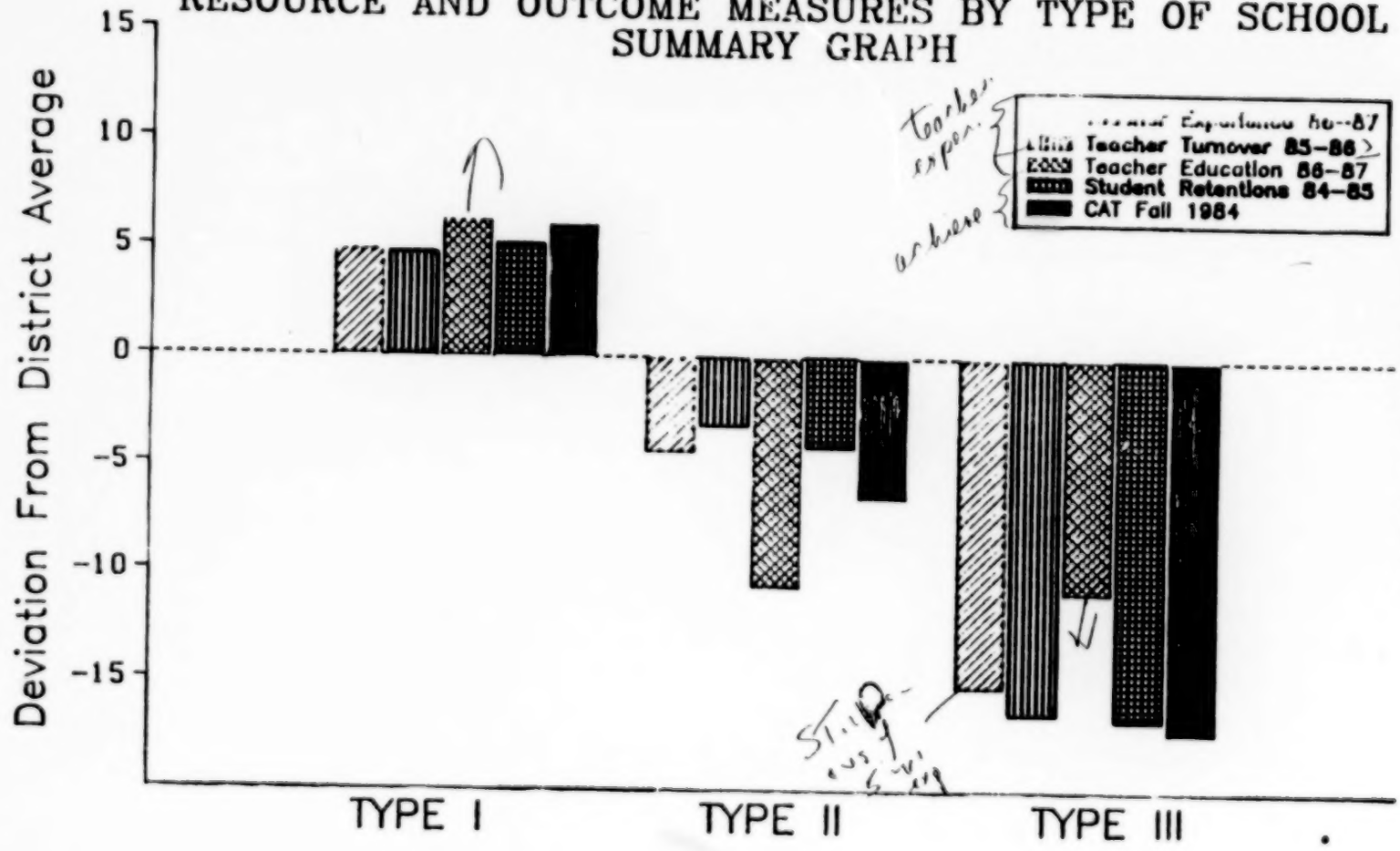
DEKALB ELEMENTARY SCHOOLS
RESOURCE AND OUTCOME MEASURES BY TYPE OF SCHOOL
SUMMARY GRAPH



PLAINTIFF'S EXHIBIT 113

538

DEKALB HIGH SCHOOLS
RESOURCE AND OUTCOME MEASURES BY TYPE OF SCHOOL
SUMMARY GRAPH



PLAINTIFF'S EXHIBIT 114

539

PLAINTIFF'S EXHIBIT 123A

PERCENTAGE OF BLACK TEACHERS ASSIGNED TO DeKALB COUNTY ELEMENTARY SCHOOLS: 1984-1985, 1985-1986, 1986-1987

	1984-1985	1985-1986	1986-1987
H. Alexander	36.00	36.67	37.50
Allgood	30.77	18.52	25.81
Ashford Park	20.00	22.58	21.21
Atherton	30.00	32.26	36.36
Austin	21.74	20.59	13.33
Avondale	26.67	24.14	20.59
Briarlake	14.29	13.79	23.08
Briar Vista	31.82	27.27	19.05
Brockett	25.00	26.09	29.17
Canby Lane	25.00	31.03	25.00
M. Candler	24.00	21.74	22.22
Cedar Grove	26.47	32.35	32.43
Chapel Hill	38.89	41.46	39.53
Chesnut	27.27	26.09	20.00
Clifton	34.62	32.14	36.67
Columbia	26.47	25.00	37.14
Dresden	26.67	33.33	32.35
Dunaire	25.93	24.00	27.59
Evansdale	19.05	19.05	21.74
Fairington	28.13	27.03	23.08
Fernbank	22.58	29.03	27.59
Flat Shoals	32.43	27.78	31.58
Forrest Hills	33.33	26.09	25.93
Glen Haven	21.21	29.03	25.00
Gresham Park	39.29	32.36	43.75
Hambrick	21.74	23.81	22.58
Hawthorne	27.78	27.78	21.05
Henderson Mill	20.83	24.00	19.23
Hightower	16.67	12.50	15.00
Huntley Hills	21.05	25.00	21.74
Idlewood	29.17	22.73	25.93
Indian Creek	27.27	33.33	30.30
Jolly	20.00	20.00	17.86
Kelley Lake	38.46	33.33	46.67

	1984-1985	1985-1986	1986-1987
Kingsley	16.67	16.67	15.38
Knollwood	31.03	32.14	35.48
Laurel Ridge	27.27	22.58	18.75
Livsey	31.58	27.78	25.00
McLendon	26.67	22.58	30.30
Mainstreet	27.78	29.73	29.55
Bob Mathis	35.00	27.27	33.33
Meadowview	26.09	32.00	42.31
Medlock	20.00	15.79	18.18
Midvale	23.08	22.22	24.00
Midway	26.92	30.43	24.00
Montclair	26.32	30.00	31.82
Montgomery	17.65	18.18	18.75
Nancy Creek	23.08	25.00	20.00
Oakcliff	22.58	22.58	17.14
Oak Grove	16.67	20.00	20.00
Peachcrest	25.00	29.63	32.14
Pleasantdale	23.81	18.18	20.83
Rainbow	27.03	33.33	36.59
Redan	31.91	30.77	28.57
Cary Reynolds	22.58	25.00	21.88
Rockbridge	21.62	24.32	27.03
Rock Chapel	21.74	21.74	17.86
Rowland	25.93	29.63	22.58
Sagamore Hills	25.00	23.81	28.57
Sky Haven	34.09	39.13	40.43
Smoke Rise	21.62	21.62	13.51
Snapfinger	30.23	33.33	34.09
Leslie J. Steele	37.04	39.29	37.93
Stone Mill	20.83	24.00	20.83
Stone Mountain	25.71	29.73	33.33
Stoneview	25.71	27.78	30.00
Terry Mill	27.27	32.26	47.06
Tilson	30.30	29.41	34.29
Toney	25.00	25.64	38.46
Vanderlyn	26.09	23.33	18.18
Wadsworth	47.83	41.67	40.00
Woodridge	23.53	25.71	23.08
Woodward	18.52	23.33	24.24

PLAINTIFF'S EXHIBIT 123B

PERCENTAGE OF BLACK TEACHERS ASSIGNED TO DEKALB COUNTY HIGH SCHOOLS: 1984-1985, 1985-1986, 1986-1987

	1984-1985	1985-1986	1986-1987
Avondale H.S.	25.42	25.86	29.51
Briarcliff H.S.	18.52	24.49	19.57
Cedar Grove H.S.	26.32	35.14	34.15
Chamblee H.S.	19.61	17.65	22.00
Clarkston H.S.	18.92	21.62	20.00
Columbia H.S.	28.57	30.77	36.00
Cross Keys H.S.	20.41	18.87	21.15
Druid Hills H.S.	23.21	21.57	21.28
Dunwoody H.S.	22.78	25.32	24.66
Gordon H.S.	39.22	39.58	33.33
Henderson H.S.	20.34	24.19	27.14
Lakeside H.S.	25.37	23.88	23.94
Lithonia H.S.	26.39	27.03	30.14
Peachtree H.S.	24.62	21.67	23.73
Redan H.S.	18.81	19.28	15.71
Sequoyah H.S.	22.22	25.00	24.56
Shamrock H.S.	24.24	26.47	27.54
Southwest DeKalb	30.30	30.30	28.57
Stone Mountain	27.27	27.47	20.27
Towers H.S.	24.68	26.32	29.73
Tucker H.S.	26.47	26.15	26.56
Walker H.S.	33.82	41.27	31.34

PLAINTIFF'S EXHIBIT 123C

SINGLETON INDEX, BY TYPE OF SCHOOL
DeKALB COUNTY ELEMENTARY AND HIGH SCHOOLS
1986-1987 SCHOOL YEAR

ELEMENTARY SCHOOLS

	Singleton Index
TYPE I SCHOOLS: (Long-Term White)	.83
TYPE II SCHOOLS: (White to Black)	1.10
TYPE III SCHOOLS: (Long-Term Black)	1.44

HIGH SCHOOLS

	Singleton Index
TYPE I SCHOOLS: (Long-Term White)	.90
TYPE II SCHOOLS: (White to Black)	1.09
TYPE III SCHOOLS: (Long-Term Black)	1.29

SOURCE: Teacher Tapes, 1986 School Year

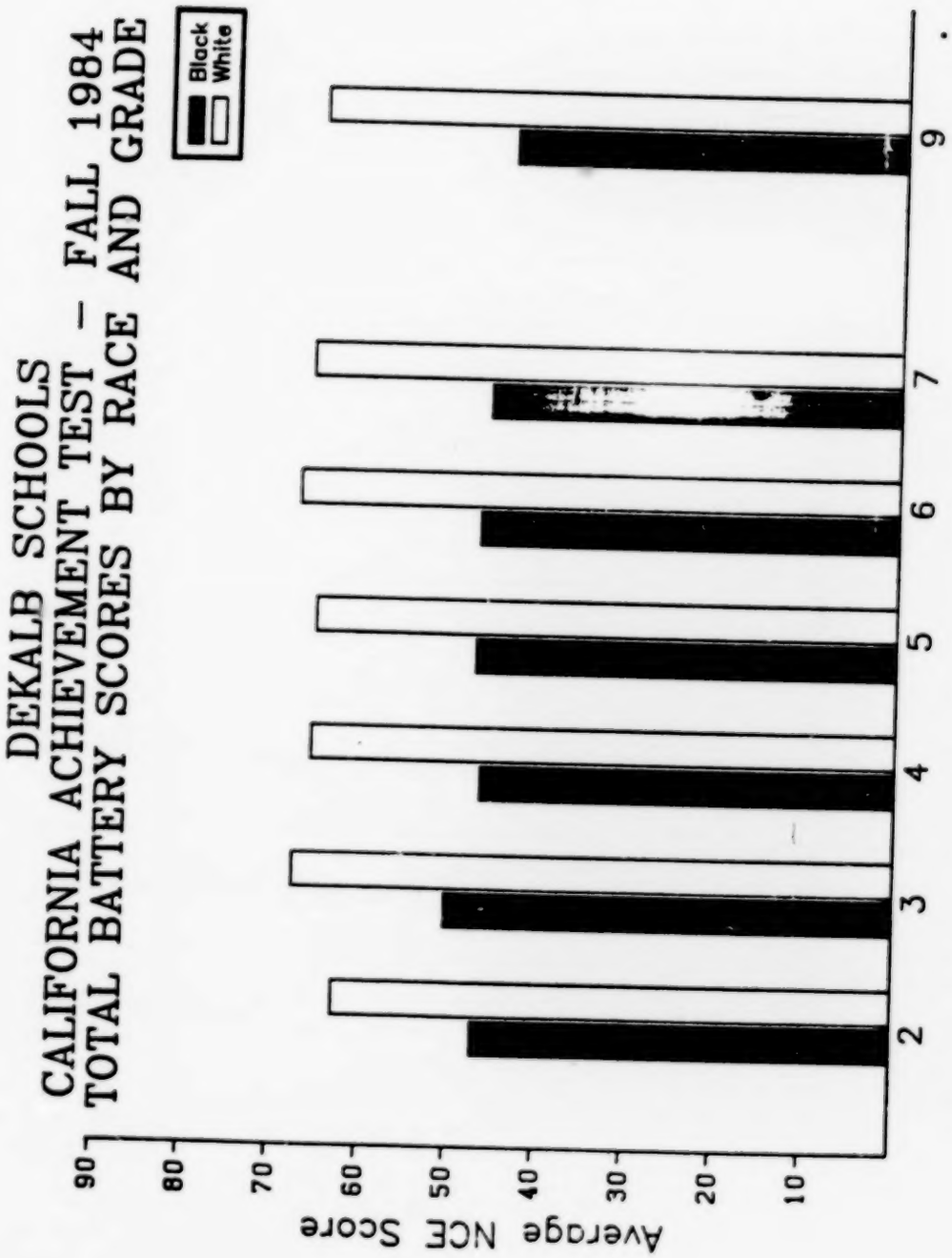
PLAINTIFF'S EXHIBIT 123D

SINGLETON INDEX, BY TYPE OF SCHOOL
DeKALB COUNTY ELEMENTARY AND HIGH SCHOOLS
1984-1985 and 1985-1986 SCHOOL YEARS

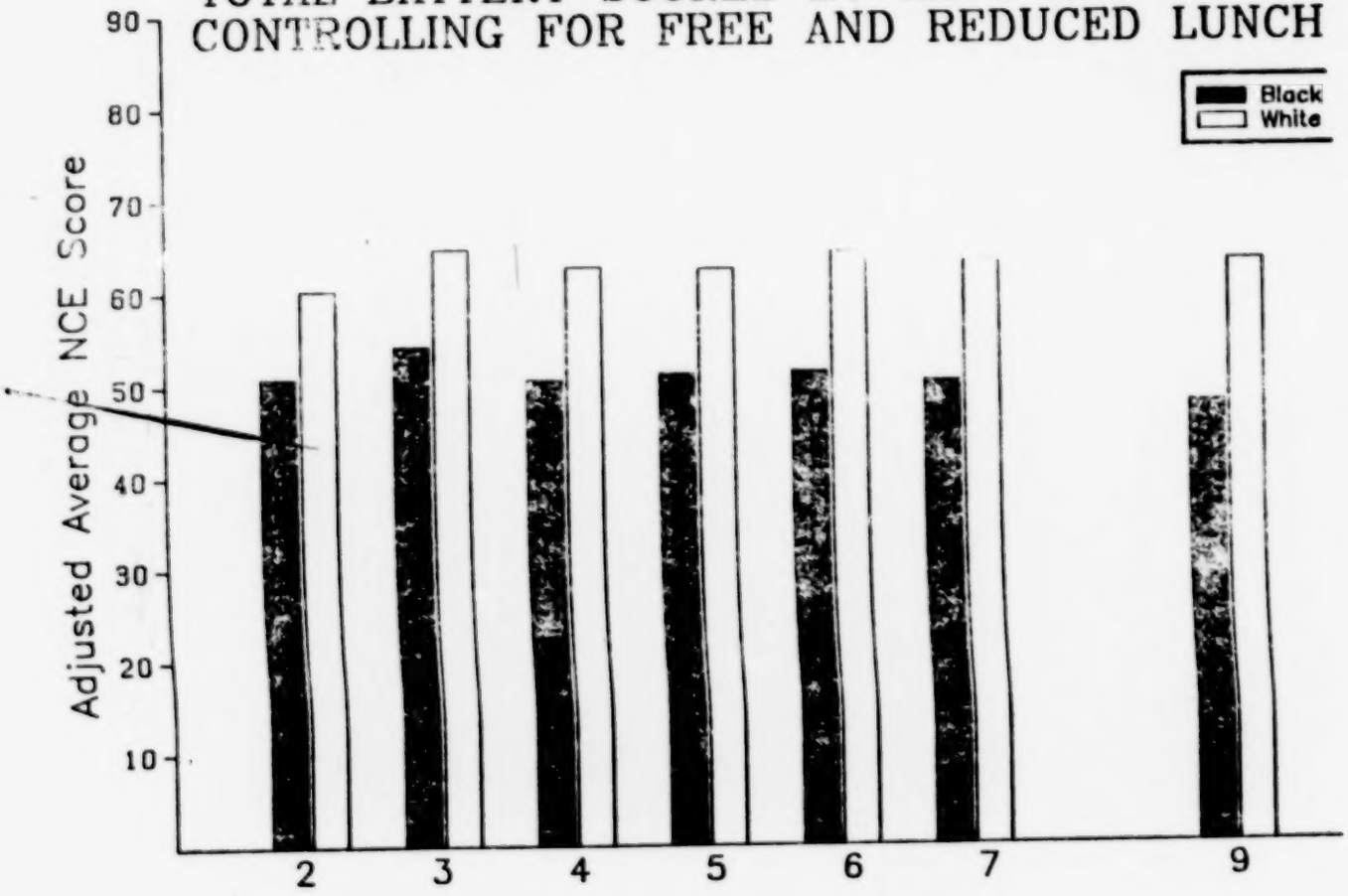
	Singleton Index	
	1984-1985	1985-1986
ELEMENTARY SCHOOLS		
TYPE I SCHOOLS: (Long-Term White)	.90	.88
TYPE II SCHOOLS: (White to Black)	1.06	1.16
TYPE III SCHOOLS: (Long-Term Black)	1.26	1.23
HIGH SCHOOLS		
TYPE I SCHOOLS: (Long-Term White)	.92	.88
TYPE II SCHOOLS: (White to Black)	1.01	1.08
TYPE III SCHOOLS: (Long-Term Black)	1.36	1.41

SOURCE: Teacher Tapes, 1984 and 1985 School Years

PLAINTIFF'S EXHIBIT 124B

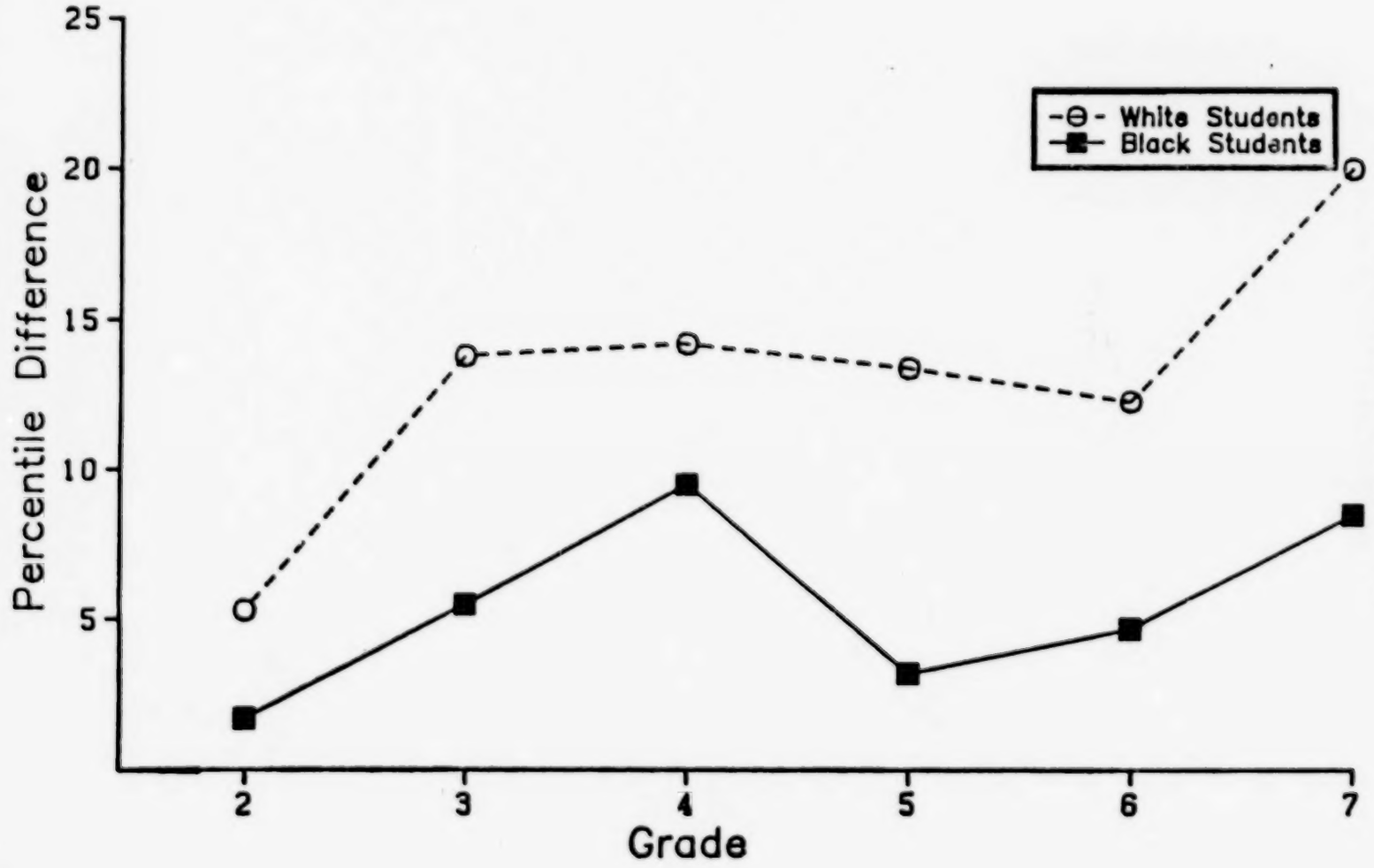


CALIFORNIA ACHIEVEMENT TEST – FALL 1984
TOTAL BATTERY SCORES BY RACE AND GRADE
CONTROLLING FOR FREE AND REDUCED LUNCH



PLAINTIFF'S EXHIBIT 124C

546



PLAINTIFF'S EXHIBIT 125

547

PLAINTIFF'S EXHIBIT 128

Faculty

June 15, 1969 order

> "Teachers, principals, and staff members shall be assigned to schools so that the faculty and staff is not composed exclusively of members of one race. Wherever possible, teachers shall be assigned so that more than one teacher of the minority race (white or Negro) shall be on the desegregated faculty . . . The County Board shall establish as an objective that the pattern of teacher assignment to any particular school not be identifiable as tailored for a heavy concentration of either Negro or white pupils in school."

Schools not complying:

year	% black teachers in the system	% black teachers in white schools		% black teachers in black schools	
1969	Elem. 6	Doraville	0	H. Alexander	22
		M. Harris	0	Terry Mill	22
		Pleasantdale	0		
		Warren	0		
1970	Elem. 7	Coralwood	0	Terry Mill	32
1971	Elem. 7	Coralwood	0	H. Alexander	29
		Montclair	0	Stoneview	19
				Terry Mill	32
	High 5			Gordon High	16
1972	Elem. 8			H. Alexander	29
				J. Cherry	22
				Sky Haven	24
				Stoneview	20
				Terry Mill	36
	High 5			Gordon High	24
1973	Elem. 8			H. Alexander	30
				J. Cherry	25
				Sky Haven	24
				Meadowview	20
				Stoneview	19
				Terry Mill	37
	High 6			Gordon High	26

year	% black teachers in the system	% black teachers in white schools	% black teachers in black schools	
1974	Elem. 10		Gresham Park	34
			H. Alexander	37
			Kelley Lake	24
			L.J. Steele	54
			Terry Mill	56
			Tilson	53
			Toney	29
	High 8		Gordon High	54
			Walker High	27
1975	Elem. 13		Gresham Park	48
			H. Alexander	38
			Kelley Lake	29
			L. J. Steele	47
			Sky Haven	34
			Stoneview	26
			Terry Mill	50
			Tilson	40
			Toney	39
	High 11		Columbia High	24
			Gordon High	48
			Walker High	28
1976	Elem. 16		Gresham Park	49
			H. Alexander	36
			Kelley Lake	26
			L.J. Steele	42
			Sky Haven	27
			Terry Mill	47
			Tilson	47
			Toney	33
	High 14		Gordon High	46
			Walker High	26

Faculty

November 3, 1976 order

> "The ratio of black to white teachers in each school must be substantially similar to the system-wide racial ratio. Defendants are required to reassign teachers with all deliberate speed so that the racial distribution of faculty at *all* schools approximates the distribution of faculty in the entire school system."

Schools not complying:

year	% black teachers in the system	% black teachers in white schools	% black teachers in black schools	
1977	Elem. 17		Gresham Park	31
			H. Alexander	29
			I.J. Steele	30
			Meadowview	28
			Terry Mill	28
			Tilson	29
			Toney	28
	High 16		Gordon High	36
1978	High 19		Gordon High	39
1979	Elem. 20		Gresham Park	35
			Toney	30
	High 19		Gordon High	33
1980 Census Atlanta S.M.S.A. labor market of elem. & sec. teachers 26% black				
1980	Elem. 20		Toney	31
	High 20		Gordon High	30
1981	Elem. 24		Meadowview	37
			Peachcrest	37
	High 23		Gordon High	34
1982	Elem. 25		Meadowview	38
	High 24		Gordon High	37

year	% black teachers in the system	% black teachers in white schools	% black teachers in black schools	
1983	Elem. 27		Meadowview	38
	High 25		Gordon High	39
			Walker High	36
1984	Elem. 27		Gresham Park	39
	High 26		Gordon High	39
1985	Elem. 27	Hightower 14	Canby Lane	39
			Gresham Park	39
	High 26		Gordon High	39
			Walker High	38
1986	Elem. 28	Austin 16	Gresham Park	43
		Hightower 14	Terry Mill	41
		Kingsley 17		
		Laurel Ridge 16		

TESTIMONY OF DR. DAVID ARMOR

* * * *

[3] (In Atlanta, Fulton County, Georgia; Monday, July 13, 1987, 9:45 a.m., in open court.)

THE COURT: All right, I'm sorry for the delay. Are you ready to resume?

MR. WEATHERLY: Yes, Your Honor.

THE COURT: All right. Call your next witness.

MR. WEATHERLY: Dr. David Armor.

MR. SAMS: Before Doctor Armor comes to the stand, we have one exhibit, Exhibit 35, which is a massive—the Federal Compliance Reports. There is an Exhibit 41 which is a summary of those reports, and with the Court's permission I would like to submit another configuration of Exhibit 41. This shows the schools, the student population by year and the faculty population. I have talked to Ms. Wilde. She has no objection. It will be an aid to the Court. This is the same statistics, 35 and 41, but in a different format. I don't see why it would need to be a different exhibit.

THE COURT: All right.

THE CLERK: Doctor Armor, come around, please. Go right around there. Raise your right hand.

You do solemnly swear the testimony you are about to give shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Be seated and state your full name for [4] the record.

THE WITNESS: David James Armor.

THE CLERK: Spell your last name, please.

THE WITNESS: A-r-m-o-r.

DR. DAVID JAMES ARMOR

called as a witness by the defendant, after having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WEATHERLY:

Q. Doctor Armor, what is your current occupation?

A. I'm a Principal Deputy Assistant Secretary of Defense for Force Management and Personnel in the Department of Defense.

Q. Generally what responsibilities are within the purview of your job?

A. My department has the overall responsibility for oversight and guidance for all three military departments, all the military services, civilian and reserves, for manpower and personnel issues; includes compensation, recruiting, training, family issues, virtually every issue or policy that concerns itself with the people's side of the Defense Department.

My job, I am the number two person in that department. I work directly for the Assistant Secretary, and I stand in for him as Acting Assistant Secretary in his absence.

[5] Q. And how long have you held this position, Doctor Armor?

A. Since early May of last year.

Q. Doctor Armor, does the Department impose any constraints on you in terms of leaving Washington for business not related to the Federal Government?

A. Generally speaking, it is difficult to get away, given my responsibilities. Those responsibilities are about to change fairly drastically. The Assistant Secretary has resigned, and his last day will be this coming Friday, and I will be in a Acting Assistant Secretary for some period of time, because there is no—on the horizon there's no replacement for him, and the Assistant Secretary and the principal deputy are the only two that have signatory authority for the policies in our office, and, as an Acting Assistant Secretary, with no relief or replacement for the Assistant Secretary, it will be virtually impossible for me to leave that office until the replacement

is taken care of, and that is going to be some months at the very least.

Q. Doctor Armor, if you would, briefly, can you briefly relate to the court your post-secondary educational background?

A. I received my Bachelor's Degree in Sociology and Mathematics at the Union of California Berkeley in 1961. I received my Ph.D. in Sociology at Harvard University in 1966.

Q. And can you briefly relate your employment history since [6] receiving your Ph.D. from Harvard?

A. Yes.

I joined the faculty at Harvard in 1965 as Assistant Professor of Sociology. I taught there as an Assistant Professor and later as Associate Professor, until about 1972. I went on sabbatical that year and became a visiting Professor of Sociology at U.C.L.A. in Los Angeles.

Then in 1973 I went to the Rand Corporation in Santa Monica, California, where I became a Senior Social Scientist.

From there in 1982 I resigned to form my own company called National Policy Analysts.

In 1985 I ran for and was elected to the Los Angeles Board of Education and served there for approximately one year until I assumed my current position.

Q. Have any of the positions held by you involved research in the area of school desegregation?

A. Yes, they have.

Q. Can you briefly explain to the Court what that research has been, what generally the areas are?

A. Well, my research in desegregation actually began at Harvard, although it wasn't a specific responsibility of the job. I became involved in what has come to be known as the Coleman Study, and from there I did some of my own research on desegregation.

When I joined the Rand Corporation one of my primary [7] responsibilities was to do research in the field of education. And, in fact, I did so and specifically did

some research for the Rand Corporation in the field of desegregation and race relations and related kinds of issues.

My own company that I formed in 19—formed it actually in 1980, I believe, with a professor at U.C.L.A. One of my primary activities was conducting research for school districts on the desegregation topic.

Q. Now, you have indicated that you taught at Harvard. What was the subject matter of courses you taught at Harvard, Doctor Armor?

A. I taught a number of different things, but the primary emphasis of my teaching during that period was research, we call research methods, for Ph.D candidates in sociology, psychology and anthropology, courses in the statistical analysis of social science data, the courses in survey methodology, and how to design and conduct surveys, computer applications, data analysis using computer techniques and sophisticated computer software. And I also taught Introductory Sociology at Harvard.

Q. Now, as part of this course instruction did you have classes for the design and implementation of public opinion surveys?

A. Yes, I did.

The course on survey methods was both a theory and [8] practice course, and the students that took the course, as part of the teaching experience we conducted a survey, designed, collected the data, and analyzed it during the course of the seminar.

Q. And what surveys did you design at that time?

A. At that time a number of different kinds of topics. The most common survey were voting studies, looking at the voting behavior and patterns in various parts of Boston during voting—during election periods.

I also designed, helped design some studies on housing rehabilitation, housing mobility, and while I was at Harvard, not part of the course, I also became involved in helping to design some of the survey instruments for the Coleman Study of Equality of Educational Opportunity.

Q. Have you conducted any surveys of public opinion surveys since those at the time you were teaching at Harvard?

A. Yes, I have.

Q. Approximately how many?

A. Well, probably at least a dozen that I was directly responsible for and probably quite a few more that I had a hand in in terms of the consulting on design.

Q. And what general areas were these surveys conducted, Doctor Armor?

A. Probably the bulk of them are in the areas of housing issues, that is, housing segregation and the causes thereof [9] and the role of personal preference. I did studies on that topic for Omaha, for Kansas City, the Kansas City Metropolitan Area. Helped design one for the Milwaukee area, and also for Little Rock, Arkansas, that got at the general issue of housing segregation and its causes.

The second area of I guess I would call it desegregation planning, where the basic issue concerns the effectiveness of alternative approaches to desegregation, and I have done major surveys there in Los Angeles; in San Diego; in Chicago; in Norfolk, Virginia; Little Rock, Arkansas; which was both a housing survey and a desegregation planning survey; and Savannah, Georgia. That's most of them, I think, in that list.

Q. All right, sir.

Turning to another area, Doctor Armor, with regard to your research in school desegregation, have you had the opportunity to serve at a consultant?

A. Yes, I have.

Q. And could you explain, please, to the Court what that experience has been or what those experiences have been?

A. Well, in terms of formal consulting appointments or positions, the first one was as a consultant to the U.S. Office of Education during the design and execution of

the Coleman Studies of the Equality of Educational Opportunity.

The next position was shortly after that I worked as [10] a consultant for the Civil Rights Commission, U.S. Commission on Civil Rights, doing re-analysis of the Coleman data on similar kinds of issues.

Then I have consulted—this is just in the area of desegregation we are talking about?

Q. Yes.

A. I have consulted for numerous school boards and school districts and other organizations around the country on desegregation-related issues.

Q. Have you authored any books or articles in the area of school desegregation?

A. Yes. I have published a number of articles in that area.

Q. And are they listed on your vitae, Doctor Armor?

A. Yes, they are all listed except for, I believe, I believe the resume you have omits one article that is currently in press.

Q. What is that, Doctor Armor?

A. That's being published in a book edited by Phyllis Katz called "School Desegregation and Profiles in Controversy," and my chapter is entitled "School Bussing, a Time for Change."

Q. And I think you have indicated, Doctor Armor, that you have conducted a number of studies in the area of school desegregation.

Initially, what are the areas in which your focus has been?

[11] A. Well, probably breaks down into three or four different areas. In my early research, as well as a couple of some of my most recent efforts, has been in the area of what we call social and educational effects of desegregation and segregation.

A second—I guess I have lost track. Are we talking about my areas from certificate research in general or—

Q. Research in the area of desegregation, school desegregation?

A. The second area that I got into would probably be considered part of the desegregation plan area where I was focussing, in particular, on the effectiveness of mandatory versus voluntary desegregation plans and the issue of white flight. There are a number of studies in that area.

I have also done a number of studies in, I guess I would call it, in the housing area, housing segregation, desegregation, and causes thereof.

Throughout most of these studies I have gotten into the area of demographic analyses and trends and the impact of demographic factors, the impact of desegregation on demographics and the reverse impact of demographics on desegregation. So I guess I would call that general studies of demographic techniques as they relate to segregation.

Q. Have you done studies in the area of achievement, Doctor Armor?

[12] A. Yes, I have. In the social educational category would come several studies I have done that look specifically at the relationship between desegregation and academic achievement.

Q. Well, let's start with the area of the educational social effects of desegregation plans. What studies have you done in that area, Doctor Armor?

A. The first major study was basically a contribution to the Coleman Report looking at the impact of the distribution of counseling, school counseling resources.

Q. Doctor Armor, let me interrupt you for a moment.

We have had some testimony about the Coleman Reports, but why is the Coleman Report significant?

A. Well, first of all, I ought to say that there are several Coleman Reports, so, so as to not to be—just to be clear about it, there is the first so-called Coleman Report that looked at the question of the distribution of educational resources by racial composition of schools

throughout the country. It was the first study that I know of that was a comprehensive national survey of that question, essentially, the question of the equality of school resources throughout all parts of the nation.

Also, it was one of the first national studies to address the question of whether, to the extent that one finds disparities in resources, the impact of those potential disparities on academic performance, achievement in [13] particular. It is important, because I think it set—well, it has been used by numerous social scientists ever since to address various questions that are involved in the whole area of equality opportunity generally and specifically in desegregation issues. It was extremely controversial when it was published, and I think set the tone and set the agenda of research for a number of years following.

Q. I believe I interrupted you when you were talking about one of your first studies in the area of the effects of school desegregation.

A. Yes.

This was a resource issue at that time. It was the distribution of counseling resources according to the racial composition of schools throughout the country, and I helped design those—that part of the survey instruments and had the responsibility for analyzing that data and writing that section of the Coleman Report.

I then did—those of us that had the privilege of working on that study, many of us did further analysis of that data after the first report was published because it was so controversial.

My second major study was a major re-analysis of all the Coleman data that was carried out by a seminar at Harvard. The seminar was co-chaired by Patrick Moynihan, now Senator from New York, and Fredric Mosteller, Professor of Statics [14] at Harvard, and a number of faculty members at Harvard and a few other locations came together and met periodically and re-analyzed major pieces of that data, and that was published in a book

edited by Mosteller and Moynihan called "On the Equality of Education Opportunity." My chapter or my re-analysis focused specifically on the impact of family background factors versus school resource factors on the academic achievement of black and white children.

The next study was also a re-analysis of the Coleman data, and that was commissioned by the U.S. Commission on Civil Rights as part of their overall study called "Racial Isolation in the Public Schools." This report was published in 1967, another very important document that had a great deal of impact. My specific responsibility in that report was to analyze the impact of desegregation or racial composition of schools on the attitudes and aspirations of black and white children.

Two more studies. I then did my own study of a voluntary bussing program in Boston called the METCO Program, and that was a study basically of the impact of that desegregation program on both academic achievement and racial attitudes and racial contacts, race relations in general, I might say, and published that study along with the review of some other similar studies that were just coming out at that time in the early seventies in a journal called "The Public [15] Interest."

I didn't do a great deal. I did some case studies for Pasadena on academic achievements and its effects from desegregation, but then I didn't really do much on that topic until a study panel was put together by the National Institute for Education in 1982, I believe it was, brought together seven experts on this topic from around the country to essentially look at a series of studies. Our goal or our objective was to take the methodologically best studies on the question of academic achievement of black students and desegregation of schools, and that was accomplished by N.I.E., the completion of that.

A number of my consulting for school boards, such as Yonkers and Norfolk, also investigated academic achievement and the course of achievement as a result of desegregation plans in those such school districts districts.

Q. Doctor Armor, in the area of alternative desegregation plans and their effects on demographics and desegregation levels, have you done studies in this area?

A. Yes, I have.

Q. And what have those studies been, Doctor Armor?

A. Basically, again, I have done some studies that were published on looking at initially the issue of white flight, and the question here was whether there were differences in desegregation plans, particularly between mandatory and [16] voluntary, that might have long-term adverse effects in terms of increasing or returning to resegregation as a result of the loss of white students and families.

I did my first 55 cities study as a consultant for the San Diego Board of Education. Then I turned that into a somewhat broader study published by the Rand Corporation and delivered it at one of my professional association meetings, the American Sociological Association on the Impact of Desegregation on White Flight.

Continued doing research and a lot of case studies, particularly case studies in Seattle, a very, very thorough case study of white flight in Los Angeles, Chicago, Norfolk, Cincinnati. Some of those studies were published in an article by—to pull these things together published in a journal called "Policy Review." And I have also published some of that in my latest article that's in press.

Q. And I believe you indicated that residential housing choices was also an area of interest for you. What studies have you done in that area, Doctor Armor?

A. My work in that area have been a series of case studies in various cities, including Atlanta, Omaha, Little Rock, are the major studies where I have analyzed data, fairly detailed data, and some of those results are published in my latest article that is in press.

Q. Did these studies consider the causes of residential [17] segregation?

A. Yes, they do.

Q. Could you just briefly explain how they considered the causes of residential segregation, Doctor Armor?

A. These were all court cases where the issue facing the school board was explaining the extent of school segregation, how it arose, and the role that housing or that various factors such as economics and preference played in causing versus the causes being due to school board actions or official state actions of other kinds.

Q. All right, sir.

Now, on the issue of faculty and staff as a part of desegregation plans, have you had—have you done any research or had any experiences in this area, Doctor Armor?

A. Yes. I have done some studies of faculty racial balance in connection with cases of school boards for Omaha, Nebraska, and Savannah, Georgia.

Q. Have you been involved in desegregation litigation other than in Pitts versus Freeman, Doctor Armor?

A. Yes, I have.

Q. Approximately how many cases?

A. Somewhere between 25 and 30 different cases.

Q. Are you currently involved in any other cases?

A. The only other case currently is a case in Charleston, South Carolina.

[18] Q. All right, sir.

I believe you indicated earlier in your testimony that you were a member of the Los Angeles Board of Education. In that capacity did you have the opportunity to consider issues dealing with school desegregation?

A. Yes, I did.

Q. What were those opportunities and experiences?

A. Well, Los Angeles—of course, I worked for the Los Angeles Board of Education before I was a member, as I mentioned, conducting several different studies, one of teacher—I'm sorry—one a survey of possibility of white flight, and then I did a fuller study of white flight after a mandatory plan had been implemented. So I was familiar with, generally, with the issues surrounding desegregation in Los Angeles.

While I was on the board we were at that point in time responsible for maintaining a voluntary desegregation plan as a result of a court order. It was a very extensive, perhaps one of the largest voluntary plans in the country. It had a number of different facets and aspects both in terms of compensatory programs, student transfers, and various programs to deal with the issue of teacher racial composition in schools throughout the district.

Q. Doctor Armor, if you would, please, identify Defendant's 39.

[19] A. Yes.

Q. What is that, Doctor Armor?

A. It's a resume—well, the first page is a resume summary that includes a couple of my recent positions, and then the rest of it is a more detailed resume from about '83—I'm sorry, from about '85 on back, and it includes my publications.

Q. Have you updated this resume, Doctor Armor?

A. The first page resume summary has an update as to my positions. It doesn't have the article mentioned that I mentioned that was in press.

MR. WEATHERLY: Your Honor, I would like to qualify Doctor Armor as an expert in the areas of, first, the educational and social effects of desegregation plans, including academic achievement; secondly, the effects of desegregation plans on demographics on school enrollment trends; thirdly, the evaluation of alternative desegregation plans; fourth, the causes of residential segregation; fifth, assignment of faculty and staff in school desegregation plans; sixth, research methods and survey methods; and, lastly, statistical analysis of data.

THE COURT: Do you desire to voir dire?

MS. WILDE: No, I do not, Your Honor.

THE COURT: All right, you may proceed.

BY MR. WEATHERLY:

[20] Q. Doctor Armor, have you had any previous involvement with the DeKalb County School System?

A. Yes, I have.

Q. Have you had the opportunity to visit DeKalb County for purposes other than your appearance as a witness today?

A. Yes, I have.

Q. Do you have an approximation as to how many days over the last ten years you have spent in the DeKalb County School System observing programs, looking at schools, analyzing programs?

A. Probably something on the order of 30 to 40 days over the past ten years.

Q. What was your first involvement with the DeKalb County School System?

A. My first involvement was as an expert in the Armour versus Nix case where I focused on the causes of the role of personal preference plays in the cause of housing segregation.

Q. And did you do an analysis of that issue?

A. I did an analysis, assembled some survey data dealing with preferences, and assembled it and did some simulations on the role that that plays in explaining what we see, what we saw at that time in terms of the level of segregation in housing. Some part of that analysis involved looking at a major racial transition that had been taking place in southwest DeKalb County. And then, of course, I prepared [21] those analyses and testified in court.

Q. Did you observe schools and neighborhoods in DeKalb County at that time?

A. Yes. I did extensive observations of schools throughout the area, including schools and residential areas in DeKalb County.

Q. And were you involved in 1983 in a hearing before this Court with regard to construction in the Redan High School area?

A. Yes, I was.

Q. Did you do an analysis of school enrollment trends at that time, Doctor Armor?

A. Yes, I did.

Basically, the task there was—the issue was an overcrowding situation at Redan High School and the way in which one would promote or further desegregation by a number of alternative plans, and my task was to evaluate the district's plan of building a second school called Redan II at that time, now Miller Grove, and compare the effectiveness of that approach with two other plans that were being proposed by Plaintiffs at that time. I did some extensive analysis and projections and basically concluded that the Redan II was the most desegregative approach of the three that I evaluated.

MR. WEATHERLY: Excuse me, Your Honor.

BY MR. WEATHERLY:

[22] Q. Doctor Armor, if you would, identify Defendant's 179 and 180.

A. 179 is a comparison of the—

THE COURT: Let me interrupt you and ask you, now, Mr. Weatherly, I though we aren't going—I thought it was your position that we weren't going to relitigate matters that the court had already litigated.

MR. WEATHERLY: Your Honor, we were not attempting to relitigate. I am simply having the witness identify so we can put this in the record. There will be no further questions on these documents.

THE COURT: All right.

A. The 179 is the comparison of desegregation obtained by a plan designed by Doctor Stolley with the plan being proposed—the Redan II plan proposed by the district. The second exhibit, 180, is a comparison also of the Redan II plan with a plan called, I believe, The Rainbow

Plan. Both of these exhibits deal with the levels of desegregation obtained by these various plans.

Q. Doctor Armor, in terms of your appearance as a witness in this case, what materials, studies, or data have you reviewed?

A. I have reviewed or analyzed enrollment data, including, for a number of years, including M-to-M enrollment data, magnet and magnet type school enrollment data, enrollment projection data, a survey that I designed and supervised and [23] analyzed for the county, some census data, data on faculty racial composition over a period of years, some variety of different analyses of academic achievement data, the studies by Doctor Clark and Doctor Walberg and some of their charts and data, and then, of course, the literature, professional literature, in the field of desegregation, including such works as that by Coleman, by Farley, by Doctor Christine Rozell, by Dr. Carl Toyber, and stud like the N.I.E. report that included studies by seven different experts in desegregation and academic achievement.

Q. Have you conducted a survey in DeKalb County, Doctor Armor?

A. Yes, I have.

Q. If you would, please, identify Defendant's 217.

A. This is a series of tables that tabulate the results or summary of a survey I conducted.

Q. What was the nature and purpose of this survey, Doctor Armor?

A. The nature of the survey was a survey of parental opinions and intentions regarding various aspects of the school desegregation in DeKalb County, and its purpose was to help me and the district in evaluating both current desegregation plans as well as possible future developments of those plans.

Q. All right, sir.

[24] Will you be relying upon the results of this survey in rendering your opinions today?

A. Yes, I will.

Q. What methodology did you employ in conducting the survey, Doctor Armor?

A. It was what we call a standard telephone interview survey that is perhaps the most frequent kind of survey being conducted these days. We drew a stratified random sample of parents of DeKalb School System, stratified by race so that we had a fully adequate number of both black and white parents.

We developed—I developed an interview schedule, series of questions, drawing heavily upon similar studies and interview schedules that I have used in other studies of segregation plans in other cities, and then the interview was administered or the actual telephone interviewing was taken—took place—was conducted by Amergon, a professional research and interviewing firm in Detroit, Michigan.

Q. Did any other persons assist you in the development and implementation of this survey?

A. Yes.

Q. Who was that?

A. Dr. William Clark from U.C.L.A. participated in some of the overall design of the instrument, the questionnaire, interview schedule, and then Dr. Sandy Berry, who is the Head of Survey Research at the Rand Corporation, helped in some of [25] the question wording and format of the questionnaire, question wording, and she also did some onsite monitoring, training of interviewers at Amergon and onsite monitoring of the interviewing process in Detroit.

Q. Doctor Armor, if you would please identify Defendant's 9.

A. Defendant's 9 is the interview protocol or the interview schedule used for the survey.

Q. Did you approve of the final survey questions, Doctor Armor?

A. Yes, I did.

Q. Do you have an opinion as to whether or not this survey was valid?

A. Yes.

Q. And what is that opinion, Doctor Armor?

A. Well, I think it is a valid survey.

The main threat to the validity of surveys, or primary threat, of course, is what we call response rate, that is, making sure that you are able to execute a substantial—a sufficient proportion of the original sample. It is difficult at times to reach people on the telephone, and you get bad telephone numbers, and people aren't home, requires callbacks and so on. That's one of the primary threats to validity.

This survey, I'm happy to say, was one of the highest response rates that I have ever experienced in [26] conducting a survey of this type, over 90 percent net response rate, over 80 percent gross response rate. It's the highest I have ever done of that kind.

As far as other issues, we did develop validity checks for the interviewing process and that's where we made sure that the interviewers are executing the form properly, and, of course, the content itself, it's just a question of just looking at the face content, making sure that the questions are clear and unambiguous and unbiased.

So I think in all these criteria, I think it meets the acceptable levels of validity in the field.

Q. Have you drawn any opinions or conclusions as a result of this survey?

A. Yes, I have.

Q. And what are they, Doctor Armor?

A. There's a whole number of different conclusions, depending on the specific issue.

Q. All right, sir.

If you could review the tables for the Court, please, and indicate what they show for you and what conclusions you have drawn from those tables.

A. Maybe I should start by just saying that the survey is an overview. The survey examined the current potential success and future success of the M-to-M program, potential magnet prgrams, types and kinds of magnets that might be successful [27] in DeKalb County,

and then finally an evaluation of the possibility of what might happen if a large-scale mandatory plan were adopted in DeKalb County. Those are summarized in a series of tables.

Shall I continue?

Q. Yes.

A. Table One is a description of what we call the response rate, shows the sample size. There were 625 black parents and 601 white parents in the total sample. It gives a tabulation of various non-responses and the reason for non-response, and it also tabulates a gross response rate, which is literally, of the original sample, how many interviews were completed and a net response rate which reflects deletion of bad telephone numbers, which is a common technique in telephone surveys or surveys in general, that, if you have a bad address or a bad telephone number, that they are excluded from the base and a net response rate is computed.

The gross response rate, without even deleting any of the original numbers, is over 80 percent, which is the common standard for acceptable response rates in surveys, and, of course, over 90 percent on a net response rate.

Table Two was a simple question that we often start these interviews off in terms of the overall quality perception of quality of the DeKalb School System. Both black and white parents have very similar evaluations of the quality [28] of schools in DeKalb County, and I would say, having done this kind of survey before in many other cities, very high ratings of good or excellent schools so that perception of the quality of education in DeKalb County is quite high and does not differ by race of parents.

Table Three are some general attitudes on alternative desegregation approaches. Desegregation plans, of course, are very complex with a lot of different techniques. The purpose of these questions was to use sort of fairly generic terms without mentioning specific things like

"M-to-M" or "magnet" which are terms that sometimes need explanation to parents, to get some idea of what both black and white parents think about or what kinds of plan approaches they would support or oppose.

We can and see a number of very interesting things emerged. For voluntary transfers with free transportation, which resembles the current M-to-M program, very strong support of this kind of approach from black parents. White parents also supported in the majority, although there's a somewhat higher proportion that oppose it, this type of plan.

The second, a voluntary program with special academic studies is sort of a way of describing what we try to do in magnet programs. For both groups those kinds of approaches had the highest support, and, in fact, significantly the white sample had 85 percent support, and [29] this is one of the reasons why those kinds of programs are very popular these days, because they do attract white parents into an integration experience.

And the final general approach is mandatory bussing where you mandatorily reassign parents across the county to achieve racial balance. Typically in most cities, and DeKalb County is no exception, the white parents are strongly opposed to it. Here 87 percent opposed it. Interestingly, the black parents in DeKalb County were split fifty-fifty on it. In some cities I have studied black parents tend to have a fairly sizeable majority to support to mandatory bussing, although nationally this DeKalb County result very closely corresponds to national studies on the attitudes or the views of black persons towards mandatory bussing.

Table Four is a—basically looks at the knowledge, awareness, and popularity of the M-to-M program. I think it is significant that 80 percent of both the white and black parents have heard of the M-to-M program. That is very important that people know of these programs so they can take advantage of them.

The participation rate, of course, is much higher among black parents than among white parents. We know that from our actual attendance data in M-to-M. Of those who are not participating at the present time, we asked the likelihood that they would—they might participate in the future as a [30] way of getting at the possibility of future expansion of the program. Significant numbers said they would definitely or probably like to take part of it even if it meant a busride 45 minutes away from their district. That's black parents. The white parents have not participated to any great extent at the present time, and there's no indication that that would change in the future.

Table Five is a part of two tables evaluating the magnet school approach. The first task in looking at magnet school program development is the kinds of programs that would be attractive.

Of course, again, what I have found in studies of this type, that academically oriented, technically academically oriented programs are the most popular for magnet schools: math, science, gifted and accelerated, computer science. Those usually top of the list of magnet schools in most school districts, and they certainly form one, two, three and four of the white parents' sample. Generally speaking, they are among the most popular choices for the black parents' sample. That is true for both high school and elementary programs.

Table Six was an attempt to look at the potential participation of parents in magnet schools. My focus here is especially on the white sample, because a major thrust of the magnet program would be to involve white parents coming to [31] integrated schools or in some cases majority black schools that require a change from their present neighborhood school, and the results basically show what I have seen, not only seen in other surveys, but seen in actual practice which is, indeed, if you offer a solid and popular enriched academic program, that you can attract substantial numbers of white parents into a de-

segregated school or a school they might not otherwise want to transfer into, and that is basically what these results show for DeKalb County.

The final table, Table Seven, again looks at the—at a third kind of desegregation program, in this case a countywide mandatory bussing program, which would involve the reassignment of children to a desegregated school, a mandatory reassignment, in different neighborhoods some distance away.

The results show what I have found in other cities, that I would expect the implementation of a mandatory countywide program through, let's say, a mandatory pairing of schools, that I would project a very significant amount of loss of white parents, probably on the order of 40 to 50 percent if such a plan were adopted. That would probably, as it has in many districts, accelerate and transition Dekalb County into a predominantly black school district.

Q. Thank you, Doctor Armor.

Other than the survey, Doctor Armor, what other things have you been requested to do by the DeKalb County [32] School System for purposes of your appearance here as an expert witness?

A. Basically I have been asked to study a variety of issues that get at the appropriateness and success of the DeKalb County desegregation plans and programs over the past many years in accomplishing or ending the dual school system.

Q. Have you focused on any specific areas for purposes of this?

A. I have looked at a number of different issues, including achievement and a variety of analysis of other focus, demographics, but in housing issues, housing desegregation, but my primary focus where most of my analysis was concentrated was on the issue of student assignment first and second on the issue of faculty racial balance in the schools.

Q. As a social scientist, Doctor Armor, do you have an understanding of the meaning of the phrase "dual school system?"

A. In a general sense, yes, I believe I do.

Q. And what does that mean to you, Doctor Armor?

A. I believe a dual school system is one that—a system that is maintained by official state action, state law or state action, in such a way that maintains separate schools for black students and white students.

Q. Are you familiar and do you have knowledge of the 1969 desegregation plan, DeKalb County?

[33] A. Yes, I do.

Q. Okay.

Have you formed an opinion as to the effectiveness of the 1969 desegregation plan to remedy the historically operated dual school system?

A. Yes, I have.

Q. And what is that opinion?

A. With respect to student assignment, in my opinion, the 1969 plan completely desegregated the district and undismantled or undid the prior dual school system through a series of school closings, closing all formerly black schools that were still open at that time and adopting a policy of geographic assignment which had not existed in the district prior to that time. As a result of that plan and those procedures the district was fully desegregated in 1969, at the time the plan was adopted, I should say.

Q. In the area of student assignment, Doctor Armor, have you formed an opinion as to the effectiveness of the desegregation programs in DeKalb County from 1969 to the present?

A. Yes.

Q. And generally, first, what is that opinion?

A. In my opinion, the programs adopted in 1969 and supplemented by some later programs, M-to-M in particular, have have desegregated the district with regards to the dual school system that existed prior to 1969.

[34] Q. All right, sir.

Now, in arriving at this conclusion, what information and/or data have you relied upon?

A. A number of different things. I have, of course, evaluated the actual enrollment of schools. That was the primary focus, both individual schools and some summary indicators of desegregation from 1965 basically up to the present day.

I have looked at M-to-M program enrollment, enrollment in magnet schools. I have looked at a series of boundary changes and school openings and school closings and their potential role in desegregation. I believe that's most everything that I have relied upon. Some census data.

Q. In arriving at your opinions have you utilized any quantitative means for calculating desegregation?

A. Yes, I have.

Q. And what are these quantitative means, Doctor Armor?

A. For the purpose of summarizing desegregation levels I have computed what are known as the dissimilarity index and the exposure index, which are two different quantitative measures of desegregation that are in very common and very wide use by social scientists today to measure desegregation.

Q. Are you familiar with and conversant with the distinctions between the two?

A. Yes, I am.

[35] Q. Have you prepared exhibits that reflect the use of these indices?

A. Yes.

Q. Please identify Defendant's 181 and 182?

A. Exhibit 181 is the—is an illustration of what the—it's a word definition, you might say, of the dissimilarity index and of the exposure index, and with an example.

182 is an illustration of values or index values on a hypothetical group of ten schools that have different racial compositions.

Q. And when were those exhibits originally prepared, Doctor Armor?

A. Let's see, I believe these were the exhibits that were used in Armour versus Nix.

Q. Could they have been used in the Redan case?

A. It could have been Redan. I used those indices in both cases, so—but I don't remember, it was too long ago, which one was.

Q. Well, I believe that the record will indicate that it was in 1983 in the Redan phase of this case.

Doctor Armor, recognizing that the court has heard some testimony on the use of the indices, could you briefly explain what Exhibits 181 and 182 mean and the distinctions, could you explain the distinctions between the dissimilarity and the exposure indices?

[36] A. Yes.

Without trying to go through the details of each exhibit, which I find is still confusing to the layman, no matter how we try to describe what these indices measure, let me just summarize what the two indices are.

The dissimilarity index is a measure that measures essentially departures from perfect racial balance. The basic thing being measured there is how many people you have to move around to achieve perfect balance in every school, that is, that every school would have a percent black or a percent minority that would equal the exact district average percent of black or minority. So, in effect, I like to call it sort of a racial balance measure.

The exposure index is conceptually quite a different indicator, because it is a measure more of the interracial contact or the exposure of one group to another, and it is not the same thing as racial balance, because there are situations where there's very substantial exposure of the minority population to white students, even though that happens in a case where there isn't perfect racial balance.

The exposure index is, therefore, is more of a measure of interracial contact, in some cases you might say a measure of racial isolation relative to the number of—or

proportion of white in a district, whereas the dissimilarity is a measure of pure racial balance.

[37] I guess I should say that the second exhibit is an illustration of a point that I may make a couple of times, and that is, while, generally speaking, the two indices behave fairly similar, that is, in large national studies comparing these indices for whole school districts or whole cities, it is used also for residential segregation as well as school segregation, generally speaking, the two indices can have very similar values.

There are some circumstances, however, where the two indices measure—say two quite different things. I mean, they don't agree at all, and I have shown that in the third panel of 182. It is an example of the dissimilarity index. These range from zero, meaning perfect integration, and one meaning perfect segregation. It shows dissimilarity being .56, which is midway on the scale and, therefore, some significant racial imbalance exists, but the exposure index value is .11, which is very, very low segregation by this measure, about as low as it would ever get this any empirical case that I know of.

If you look at the distribution of students in each school, you can see what—you can really get an idea of the difference of the two measures.

It happens—this phenomenon happens when a district has a fairly low percent of minority or black, in this case hypothetically a ten percent black total population. [38] The 1,000 black students are, you would say, I would say, well integrated, that is, each of them are in schools with 800 white students, so the minority population here is well integrated.

However, there are, because it is a very low percent black hypothetical district, there are five schools that have no black students in them, so that while the black students are well integrated at about 20 percent per school, some ways of looking at it would be ideal, you have substantial imbalance because all 1,000 are in five schools and none are in five other schools. You wouldn't

get a low dissimilarity dissimilarity unless we distributed those thousand until they had something close to ten percent in each district.

The bottom line of this is that there are circumstances where the two indices measure quite different things, and, therefore, one has to be careful as to what one is measuring and what the before using the index.

Q. Thank you, Doctor Armor.

MR. WEATHERLY: Your Honor, I realize we have only gone about an hour and ten minutes. I am just advising the Court I am at a point where the witness is going to shift to a series of exhibits using the indices; will probably be 15 or 20 minutes of testimony.

THE COURT: We will take a the morning recess at this time, 15 minutes.

[39] (Recess)

THE COURT: Go ahead.

DR. DAVID JAMES ARMOR

having returned to the stand, testified further as follows:

DIRECT EXAMINATION

BY MR. WEATHERLY:

Q. Specifically, Doctor Armor, what did you do with the indices for purposes of arriving at your opinion with regard to the desegregation efforts of the DeKalb County School System since 1969?

A. I computed the index of dissimilarity and index of exposure from 1965 up through 1986 for both high schools and elementary schools and tabulated the numbers.

Q. If you would please identify Defendant's 2 and 7, Doctor Armor.

A. Exhibit 2 are the results of the indices of dissimilarity and exposure, there's two different versions of the exposure, but the last row, relative exposure, are the numbers of interests, and also tabulates the percent

minority and the total enrollment figures for 1965 through 1986.

Exhibit 7 is the—is a separate tabulation of M-to-M enrollment between 1977 and 1986, and from 1984 through '86 it computes the—it shows the index values for dissimilarity and the relative exposure index, if all of the [40] M-to-M students were put back into their school of residence, so it's the level—index levels or desegregation levels that would exist without or in the absence of the M-to-M program.

I might mention also, because I said the index ranges from zero to one, frequently the index is displayed from zero to a hundred, and in this case in all my exhibits I have used the scale zero to a hundred instead of zero to one.

Q. Have you prepared other exhibits reflecting your analysis, Doctor Armor?

A. Yes. I have prepared a series of charts that summarize the index values for those years.

Q. Would you please identify Defendant's 5?

A. Yes.

Exhibit 5 is the desegregation—the relative exposure index for high schools tabulated from '65 to 1986, and it also shows the tabulation or a graphing of the percent minority for those years, and it also has an indication of the index value if all M-to-M students were returned to their home school.

Q. All right, sir.

Now, Doctor Armor, what does Defendant's 5 show?

A. Well, basically it shows that, as we would expect, in 1965, and for all earlier years, the index was one hundured reflecting perfect segregation. All schools were either all-black or all-white from that year and prior to that year.

[41] Starting in 1966—I will also mention that the percent minority was quite low, about five percent, in those—in 1965 and throughout the late sixties.

The index—

Q. Doctor Armor, if I may interrupt you, you have used for your charts percent minority rather than percent black. Would you tell the court why you used percent minority?

A. Yes. I have used percent minority because in recent years, last few years, there are not a large percent, but there are some non-black minority students such as Asian students. Conceptually the reason for doing this, and I have done it virtually all of the cases that I have worked on, is that generally speaking, one cannot desegrate blacks students with other minority students. The relevant level—the relevant issue for desegregating black students is how many white students there are.

For example, a school that was 50 percent black and 50 percent Asian would not be a desegregated school by most definitions that I know of, or 50 percent black and 50 percent Hispanic, such as we have throughout much of the Southwest.

There's no way to compute these indices in a summary fashion without making a choice whether minority students—whether non-white—excuse me—whether non-black minority students should either be combined with white students or combined with black students, because of my own conceptual [42] belief that you can't desegregate black students with minority students, and because the percent white is the relevant statistic for evaluating the success or potential for desegregaiton, I have combined them—in these indices I have combined them—I have combined other minority with black rather than putting them into the white category.

Q. All right, sir.

I'm sorry for having interrupted you. Would you explain—

A. I should also say that I don't think it makes much difference here. In the early years, certainly up through—up until the late seventies, early eighties, I don't think it makes any appreciable difference, because the percent other minorities are extremely small.

In any event, the chart shows a rather steady decline in the index in the late sixties, primarily through a freedom of choice plan that was adopted which allowed black students to attend white schools. The fact that it dropped quite a bit illustrates the extent to which, with a very small number of minoriy students, fairly substantial numbers of them did, in fact, transfer to white schools during that period.

The biggest drop, the largest change was in 1969 when —in '68 and '69 when the last black high schools were closed, so that in 19—as of '69, that fall, the index drops [43] to 10, which is an extremely low level of segregation, about as low as you would ever see that index fall.

Then starting in the early seventies there was a very, very substantial demographic transition that took place in the southern part of the county, a very rapidly growing black population, declining white population, and increasing minority of black population throughout the seventies, and, as the percent minority began rising steeply, as you can see, starting in '72 and has actually risen fairly steadily throughout that time, the index began climbing again as the schools in the southwest part of DeKalb County became increasingly minority and a number became predominantly minority during this time.

That increase in the index for high schools peaked at about 1977, and at this time the M-to-M program, which had had some numbers in it in prior years, but really began to grow dramatically with some enhancements involving free transportation and publicity and a variety of other changes that took place in '76, and we conceded that, if that program had not been started, the solid curve there which peaks at about '77, one would continue that line up to the first circle on the 1984 year, so that without the M-to-M program the index would not have begun declining until at least '83 or '84.

In any event, as a result of that program and to some extent some demographic changes, the index began [44] declining again, and today, or 1986, the index has dropped

down to 35, which is a reasonably low figure, indicates a fairly substantial amount of desegregation going on.

The three circles on '84, '85, '86 shows what the desegretion index would be if the M-to-M program did not exist, and we can see that the segregation level would be 15 points higher if we did not have the M-to-M program compared to what it is today, a rather significant impact on desegregation as a result of the M-to-M program.

Q. Doctor Armor, have you formed any impressions as to whether there is a trend in DeKalb County with regard to the levels of desegregation in its schools?

A. Yes.

Q. What is that opinion?

A. Well, I would expect the trend to continue. As we see, it is a trend that's gone on for quite some time. It is a trend that started in '77. It was a slow trend until '81, but it is a more steeper trend now, and I think demographically speaking one would expect that trend to continue for several more years, at least.

I would also, based on my analysis of things like the M-to-M program and the potential for other kinds of programs, I would expect that index to keep declining for at least several more years.

Q. And have you done an analysis of elementary schools using [45] the relative exposure index?

A. Yes, I have.

Q. If you would identify Defendant's Number 4, please, sir.

A. Yes. This is the relative exposure index for elementary schools, the dark, heavy line, between 1965 and 1986, also tabulated as the percent minority for those same years. Also, the circles on the '84, '85, '86 years of the graph represent what the index value would be if there was no M-to-M program.

Q. Do you see a similar trend for elementary schools as you did for high schools?

A. Yes.

Basically the trend is more marked in the '69 year than it was for high schools. It has some very, very steep drop; the index dropped more than 30 points from just about 60 down to 30 upon the adoption of the '69 plan when all of the remaining black schools were closed.

Again, as the percent minority began rising, the index climbs again, reaches a maximum of around the low sixties and again begins declining again. Some of that decline has been due to the M-to-M and other programs, although in the case of the elementary there are other factors operating, including demographic patterns, some more integration taking place geographically in the district, and that is probably the predominant reason by the index is falling and there's more desegregation throughout the [46] district.

Q. Doctor Armor, have you prepared exhibits using the dissimilarity index?

A. Yes, I have.

Q. Would you identify Defendant's Number 6, please?

A. Number 6 is the display of the dissimilarity index for high schools, same years, also percent minority is shown, and also the value of the dissimilarity index if the M-to-M program didn't exist.

Q. And what does the chart reflect, Doctor Armor?

A. Well, the chart reflects a similar pattern, although the drop or the decline for the dissimilarity index is not as great, that is, the index was a hundred in 1965 when this system was totally desegregated, totally segregated, it only dropped 50 points to 1969, even though all black high schools were closed by that time and, in fact, there was no—not even a single majority black high school at that point. But the index is only 50, and the reason it is only 50 was discussed by me in the hypothetical example I showed on Exhibit—I don't remember the number, but the hypothetical example, that the reason this dissimilarity is still 50, which represents the mid-point in segregation, is because there were only five percent minority, and

that five percent was not distributed in a racially balanced way with five percent minorities students in every single—in every single high [47] school.

Rather, what you had was a series of well-integrated high schools in the southwestern, mostly south and southwestern part of the district. So, even though there were no predominant minority high schools, and, in fact, I would describe most of them as well within the range of an integrated school, because they were not uniform any distributed in a racially balanced fashion, we still have an index of 50.

As far as the rest of the pattern, it also shows a climb in the dissimilarity index until '76, and then a steady decline in the index from '76 on to its current level of about 48 in 1986.

Q. And, Doctor Armor, have you prepared an exhibit using the dissimilarity index in elementary schools?

A. Yes.

Q. And would you identify Defendant's Number 3?

A. Yes.

Q. What is that, Doctor Armor?

A. This is the final chart which shows the dissimilarity index values for elementary schools, same years, same everything else.

Q. Can you explain the difference in the patterns for elementary schools than in high schools, Doctor Armor?

A. Yes.

[48] We have, again, a significant decline in the index between 1965 and '69 with the largest decline between '68 and '69 when the last elementary schools were closed, the last elementary predominantly minority schools were closed.

But in this case the index remains—never got in those early years never got below 70, even though all but one of those elementary schools were well integrated at the time of '69, and the reason for that, again, is that the fact that the index measures racial balance so that—with only seven percent minority in the district at that time,

they were not distributed uniformly, they were, for the most part, in the south and southwest parts of the district, so we have a situation where we had very substantial integration as far as racial contact and racial isolation is concerned, but there was still racial imbalance existing at that time, and the rest of the trends are similar, just less pronounced than they were for the exposure index.

Q. Were there any excess of majority black schools in 1969, Doctor Armor?

A. Yes, there was.

Q. What school or schools?

A. As I mentioned, with the exception of one elementary school, all the elementary schools were well integrated. The one exception was Terry Mill, which I believe was about 70 percent minority in the fall of '69.

[49] Q. Did you make any inquiries with regard to Terry Mill Elementary School?

A. Yes, I did.

Q. And have you formed any impressions as a result of that inquiry, Doctor Armor?

A. Yes.

Q. What are they?

A. I was concerned obviously with a school at 75 percent minority at the time the '69 plan was adopted, because it is predominantly minority, 75 percent, and, in fact, it became all minority within a few years after the plan adoption.

I wanted to make sure—first of all, I wanted to satisfy myself as to what had happened was a result of the plan assigning students or what have you, or was it a result of demographics, and also what was the before the court at that time.

Basically, if you look at the enrollment patterns for Terry Mill and you look at where it was located, Terry Mill, of course, is—

Could we have the map up?

Yes, Terry Mill is the school closest to the City of Atlanta, and, in fact, the pattern of in-migration followed

sort of a expansion from this portion of the eastern part of Atlanta down through in a southerly and southwesterly —southeasterly direction. In 1968, the fall, which would be [50] the latest figures that would be before the court during the time that the plan was discussed and adopted, Terry Mill was only about fifty-fifty black, 50 percent black, 50 percent white, so that—

And, moreover, to the best of my knowledge and analysis of documents, there were no black students assigned or from other schools close by assigned to that school from other—from some other location. So that—

If you look become a couple of years before that, Terry Mill was the first school to undergo a very rapid racial transition with a percent black growing by 20 or 30 points per year. So I think it literally overtook the plan, in effect, so that even though it was—it seemed to be an integrated school at the time the plan was formulated, but by the time the school opened in '69, it was around 70 or 75 percent black, and it was the only school that had that characteristic at the time the plan was opened, although some other schools went through that same transition in the next several years.

Q. Was Terry Mill a previously all-white elementary school?

A. Yes, it was. It was not one of the black schools. Obviously, it would have been closed by the plan. But it was virtually all-white I think as early was 1966 or '67.

Q. All right, sir.

Doctor Armor, shifting gears for a moment, have you done a study of the role of the personal choice in [51] housing patterns in the Metropolitan Atlanta Area?

A. Yes, I have.

Q. And when was this study done, Doctor Armor?

A. I did that study in connection with the Armor v. Nix case in 1978.

Q. And, briefly, what methodology did you utilize for purposes of the study?

A. Basically I used survey data to determine the level of choices or where white and black respondents or adults prefer to live in terms of racial composition, and I used those preferences for racial composition to do some simulations and analysis of how much existing housing segregation in the metropolitan area could be explained by reference only to those preferences, that is, if black and white families could get their choice, get their ideal preference for a type of neighborhood.

Q. And what conclusions did you reach from this study, Doctor Armor?

A. The basic conclusion, I think, is best described by a dynamic or the observation that the kinds of neighborhoods that blacks tend to choose ideally are the kinds of neighbrhoods that whites leave. Black families typically in this area, and it's true nationwide in other cities I have looked at, tend to favor neighborhoods that are fifty-fifty, integrated but at a fairly high level, fifty-fifty level. [52] The white families, the white respondents, on the other hand, tend to favor neighborhoods that are integrated but would be more towards the 10 to 20 percent black level. At the fifty-fifty level more whites would leave those neighborhoods than would move in, and very few, in fact, prefer to live in fifty-fifty neighborhoods.

So, these preferences set up the process of, when there's black in-migration, tends to concentrate in areas were blacks are already there, whites tend to leave, and it sets up the process of racial transition we see illustrated very clearly here in southwest DeKalb County.

Q. All right, sir.

A. I guess my quantitative analysis suggested here in Atlanta at that time that between 70—between 70 and 90 percent of existing segregation levels, depending on what index you used, could be explained by the operation of preference alone without reference to any other demographic or economic factor.

Q. Now, since the Armor versus Nix case, have you conducted other studies on the factor of personal choice and residential segregation?

A. Yes.

I did some major surveys. I conducted original surveys as well as further simulations, in some cases much more sophisticated simulations of the role of preference. The [53] most important of these studies was for the Kansas City metropolitan area. I also did something similar in the Little Rock, Arkansas, Metro Area. And I did a similar kind of study in Omaha.

Q. What results did you see from these surveys in terms of the impact of personal choice on housing patterns?

A. Basically—I'm sorry, the pattern of black preference for fifty-fifty neighborhoods, white preference was much lower percentage black, 10 to 20 percent, is repeated in all these locations, and a similar pattern of racial transition has taken place in most of these areas that I think can be explained very largely by the operation of reference, and, in fact, in the case of Kansas City, the simulations included some economic factors, and, when I put together both preferences and economic factors, I was able to explain over 90 percent of the existing level of segregation using the exposure index.

Q. Doctor Armor, given these preferences of black families and white families in terms of residential housing choices, do you have an opinion as to whether stable integrated neighborhoods are likely?

A. As a rule, they are not likely, as we see throughout this country and certainly in this area of the Atlanta area and DeKalb County. We do have, I say as a rule, because there are exceptions, of course, to any rule, although most of the [54] exceptions to segregated neighborhoods usually are transitional neighborhoods where for a time there is black in-migration, and it takes awhile for the transition to take place,

So, we do, once in awhile, see an integrated neighborhood, but usually it's transitional in nature. Over a pe-

riod of time it will shift and become—unless the in-migration stops or factors change other than what we have seen in most cities, generally speaking, the neighborhoods will transition to become predominantly minority.

Q. Have studies been done by persons other than yourself on the issue of personal choice and its impact on housing choice?

A. Yes, there have been some other studies.

Q. And, briefly, what studies have they been and are their conclusions consistent with your conclusions?

A. Yes, they are.

The theoretical basis for this phenomenon was developed in a book by Thomas Schelling. I don't recall the title of that book right now, but he formulated the theory of the tipping point and explained how that process can work mathematically, or statistically I guess you might say.

But ~~the~~ study that I thought was the best application of the tipping point theory was done by Reynolds Farley, a Professor of Sociology at Michigan, and his results were published in an article called "Chocolate City, Vanilla [55] Suburbs," and it was based upon his own survey data in Detroit. He showed very clearly in his study the tipping point in that city using his data was something around 30 percent, and that after you reached about the 30 percent level more whites would leave a neighborhood than would move in and that that sort of sets off the racial transition phenomenon.

Q. From your analysis of the Atlanta area and DeKalb County, have you forced any opinion with regard to causes for the segregated housing patterns in DeKalb County?

A. Yes.

Q. And what is that opinion, Doctor Armor?

A. Well, basically the causes of the housing segregation we see in DeKalb County are a whole variety of the interplay of personal preference, economic factors, distance, a number of factors that have been identified as impacting upon where people live and choose to live and where they can afford to live and where they want to live in relation to conveniences of various kinds, jobs, shopping centers, family, and those factors, rather than any school action or any school policy were the—are the dominant causes of segregation here in DeKalb County.

Q. And what information have you relied upon in arriving at that conclusion?

A. I relied on my earlier studies, of course, in the Atlanta metropolitan region. I have relied upon the newer studies [56] that I have conducted in Kansas City and Little Rock. For example, I have relied upon Doctor Clark's both original studies and his updates of looking at the residential transition happening here, and mobility migration happening here in DeKalb County up through '85, and I have also relied on, to some extent for the school side, ruling out the possibility of school actions, I have relied upon some analysis of boundary changes and school openings and school closings since 1969.

Q. I think you have indicated that you have done an analysis of boundary line changes in DeKalb County?

A. Yes, I have.

Q. What was the methodology of this analysis, Doctor Armor?

A. I asked the district to put together or to compile all the boundary changes that have taken place in the district from 1969 to the present time—until 1986, either as a result of—because of a boundary change or because of a school opening or school closing, and then I looked at those boundary changes and what the impact of those changes had on the racial composition of the school or the schools affected by the change and then looked at the—made an assessment of whether they had a significant effect and, if so, what kind of effect, was it segregative or desegregative. Q. Have you prepared an exhibit to reflect this analysis?

A. Yes, I did.

[57] Q. Would you identify Defendant's 60, please, Doctor Armor?

A. Exhibit 60 is a summary of boundary—school boundary change effects from 1969 to 1986.

Q. Do you have an opinion, Doctor Armor, as to whether the boundary line changes shown on your exhibit have contributed to the increasing levels of housing segregation in DeKalb County?

A. Yes, I do.

Q. And what is that opinion, Doctor Armor?

A. Well, the chart shows the summary that out of 170 changes that have taken place, either by school openings, school closings, or just the shifts of boundaries between adjacent schools, a hundred—I'm sorry—162 of them, all but eight have no significant effect. By "significant effect" in this analysis I meant one where a school changes in a segregative or desegregative direction, vis-a-vis, the district-wide average percent of black, by more than five percentage points, so that the vast majority, almost all had no significant effect and could not, therefore, on those individual schools, could not, therefore, be implicated in this very massive transition of southwest DeKalb from a white area generally to a black area.

Of those eight changes that had a significant effect, five of the eight actually went in a desegregative direction, that is, it moved as a school closer to the [58] district-wide average. Two of them had mixed effects, that is, one school became more segregated and one more became desegregated, and only one had—only one boundary change was observed in this 17-year period that actually had just a segregative effect, and I believe it was one that hit right at about the five percent point, that is, a percent black change by five points in a segregative direction.

So, there's just no way, in my opinion, that any of these boundary changes or openings or closings could be used

to explain the very massive increase of blacks and the resultant increasing segregation of the schools in that part of the district.

Q. Do you have an opinion as to the impact of the residential housing patterns in DeKalb County on school enrollment?

A. Yes.

Q. And what is that opinion, Doctor Armor?

A. Well, basically the district has followed, since the 1969 court order, a geographic assignment system which was part of the court order, with the exception of the M-to-M and magnet type programs that they operate today, which were also part of what most districts do today to further integration, that, given that geographic assignment system, number one, and, number two, given the massive demographic change and the influx of black families into the southern part of DeKalb [59] County. Obviously, if the housing is segregated geographically drawn school districts are going to lead to segregated schools that reflect basically the housing segregation.

Q. Do you have an opinion as to the impact of the boundary line changes which were done by you and reflected on Defendant's 60 on the racial composition of schools in DeKalb County?

A. Yes.

Q. And what is that opinion, Doctor Armor?

A. There is no significant or lasting effect, segregative effect, of any of those changes at the time they took place. There's only one that I would classify as only segregative, and that—I believe both the schools involved in that one change are presently predominantly black, so that whatever effect it might have had at the time, it has no present effect residual, because both schools are nearly all black as a result of racial transition. So basically there's no way those boundary changes could have had any significant impact on the school segregation we see in the southern part of DeKalb County.

Q. Doctor Armor, you have mentioned Dr. Bill Clark. Have you had the opportunity to review the analysis by Doctor Clark in this case?

A. Yes, I have.

[60] Q. Based upon your experience in school desegregation cases, do you have an opinion regarding the approach that Doctor Clark took in his analysis?

A. Yes.

Q. And what is that opinion?

A. Doctor Clark utilized and drew upon the methods that are used in the field to examine the impact of housing and residential change, relied on census data which all of us do and earlier survey data to basically make his assessment as to the causes of housing segregation and their demographic nature.

Q. Have you discussed his conclusions with Doctor Clark?

A. Yes, I have.

Q. Do you have an opinion as to whether these conclusions are consistent with studies done by Doctor Clark, by yourself, and by others in terms of the impact of the residential housing patterns?

A. Yes. I believe they are highly consistent with his other work and other work in the field.

Q. And is that consistent with the opinion that you have given today?

A. Yes, it is.

Q. Doctor Armor, I believe you indicated that the level of segregation in DeKalb County began to decline after 1976 due to programs being implemented by the school system.

[61] How has the M-to-M program affected this opinion?

A. Well, the very substantial impact, especially at the secondary level, the high school level, can be seen, first of all, just by looking at the number of students that are participating. The 1986 count is about 4500 students compared to a few hundred in 1976, so it has grown by

4,000 in the past ten years or so, and I believe I have seen some enrollment or sign-up data for the coming year, and it has been growing at about 500 a year fairly steadily the past several years, and I think—I do believe it is going to be around 5,000 at the opening of schools in '87.

Q. And 5,000 would be black students?

A. Yes. I believe nearly all the students in the M-to-M are black students.

But the impact goes far beyond those 4500 or 5,000 black students, because, ot only are those black students being desegregated or integrated, but they are transferring to schools that, without the M-to-M program, would be predominantly white and are in numerous cases having very, very substantial impact upon the white receiving school, so that you take a school that perhaps has a thousand white students that would be ten percent black or less than ten percent black and add 300 black students to that school, you are now talking about another 700 or 800 white students that are being integrated by virtue of the M-toM's coming in. So [62] you've got to count not only the black students but also the white students that are being integrated by virtue of the school.

My accounts, the way I sort of rule of thumb I have developed in this district is about two white students for each black student, so that we are talking about a total number being integrated through this plan of something on the order of 14—13 or 14 or 15 thousand students, certainly 15,000 by next fall.

So it is that 15,000, which is a very sizeable fraction of the district being integrated, that causes that index at the high school level particularly to have such a big change, that is, the segregation level has changed by 15 points due to this program.

Q. Is this observation congruent with your survey that you did, Doctor Armor?

A. Very much so. Its parents are participating in it and indicate—black parents indicate their intention is to

continue participating and to continue to expand their participation.

Q. All right.

A. I should say also it is consistent with the success of M-to-M throughout the country. I have looked at it at numerous places. It has had a very, very significant impact on desegregation in places like Los Angeles and San Diego and [63] a number of districts where it has been implemented.

Q. Have you reviewed the magnet school programs operated by the DeKalb County School System?

A. Yes, I have.

Q. And have you formed any opinions or impressions with regard to the magnet school programs?

A. Yes.

Q. And what are they?

A. Well, the magnet school program and magnet type schools are contributing to the program. There are about 1500 students in those kind of programs. I would say it is definitely in the formative stages. There are a number of schools that are just being started, the Kittridge School, for example, so it is my understanding that the expansion will continue. It is not contributing as much as the M-to-M program, but it does have a potential to contribute as it is expanded in the future.

Q. Have you discussed these programs with Doctor Freeman?

A. Yes, I have, and I have interpreted and conveyed to him my interpretations of the survey and some of the kinds of programs that would be successful.

Q. Let me ask you this, Doctor Armor. You have discussed the survey earlier. Do you recall when the survey results became available to you?

A. I saw some preliminary results in the late spring, early [64] summer, but I didn't really have everything completed until about mid-summer. I'm not sure I got them down here until late summer.

Q. Of what year?

A. I'm sorry. 1986.

Q. All right, sir.

A. The survey itself was—the interviews were conducted, and I don't believe I mentioned this earlier, in the May time frame of 1986.

Q. All right, sir.

Q. Doctor, many school districts have adopted mandatory reassignment plans. Do you have an opinion what would have been the effect of such a plan in DeKalb County between 1970 and 1987?

MS. WILDE: Your Honor, I will object to the relevance of this. There has been no request for a mandatory since 1968 in this case, to the best of my knowledge.

MR. WEATHERLY: Your Honor, we are looking at alternatives that may or may not have been available to the school system from 1970 to 1987.

THE COURT: I will overrule the objection.

MR. WEATHERLY: It will not be lengthy, Your Honor.

BY MR. WEATHERLY:

Q. Do you have an opinion, Doctor Armor?

A. I lost track.

[65] Q. As to what would have been the effect of a mandatory reassignment plan if implemented between 1970 and 1987?

A. Yes, I do.

Q. And what is that opinion?

A. Basically, if DeKalb County had adopted a comprehensive, large mandatory plan, let's say by pairing schools that were black in the South with schools that were white in the North, that there would have been very substantial white loss and resulting desegregation of DeKalb County.

Q. On what do you base that opinion?

A. I base that opinion on my research and case studies on mandatory plans that I have looked at in other

cities and also on the survey that I conducted here in DeKalb County to assess the intentions of parents were such a plan or such a mandatory transfer plan to be adopted here in DeKalb County.

Q. Have you been asked to do an analysis of the distribution of faculty within DeKalb County School System?

A. Yes, I have.

Q. What was the purpose of this analysis, Doctor Armor?

A. Basically it was to sort of similar to the student assignment issue, was to address the question of faculty balance in the DeKalb County schools and the extent to which the faculties are integrated or balanced with respect to the district-wide percent black faculty.

Q. And what information did you rely upon for purposes of [66] this analysis?

A. I relied upon the tabulation of the number of faculty by race and the percent black faculty over a number of years from 1969 onward, and I believe that's —I believe that's all just—I believe they were from Federal Compliance Reports, the numbers that I relied upon.

Q. Have you prepared an exhibit reflecting the results of this analysis?

A. Yes, I have.

Q. Would you identify Defendant's 61, please?

A. Defendant's 61 is a summary of the two parts of analysis that I did called "Faculty Racial Balance in the DeKalb County Schools as of the Fall of 1986."

Q. If you would, please, just explain to the court the conclusions that you have drawn as reflected on this exhibit, Doctor Armor.

A. Well, there's two different parts. The first part, the first table shows the relationship between the racial composition of schools in terms of percent black and the racial composition of the faculty in terms of percent black at the elementary and high school level.

Basically we see there is a tendency for the faculty to be somewhat blacker as the schools become blacker. The schools that are less than 25 percent black have—I'm sorry, I'm talking about the elementary level now—are about 23 [67] percent black and the over 76 percent or predominantly black schools have a 33 percent black, that the two extremes in the high schools is 25 and 32.

Basically, while there's a relationship there, the range of this average is only about ten points for elementary and only about seven points for high school. So that even though there's a tendency for the faculty to be blacker in black schools, it is a very modest relationship in terms of magnitude and that white elementary schools and high schools have substantial numbers of black teachers and predominantly black schools have predominant numbers or substantial numbers of white teachers, in fact, the majority in all cases, so that it illustrates that, although there's some correlation, the distance or differences between white and blacks schools is not great.

Q. You have done a faculty balance analysis shown on Defendant's 61. What was the purpose of this analysis, Doctor Armor?

A. Basically the purpose of the faculty balance part, which is the second part of the table, is to address the question of the compliance of the district or the attainment of something called the Singleton Standard, which is a rule that says that in desegregation cases that faculty should be—should approximate the district-wide black-white faculty. The problem is what is "approximate" or "substantially the same [68] as."

There are no districts that I know of that maintain an exact or identical racial composition to the district-wide average because of the complications in managing a faculty and being able to maintain such a precise matching.

So, the question becomes what kind of a standard one should adopt, and the trouble here is that there are different standards used by different courts. There is no

single uniform standard used anywhere that I know of or throughout the country in cases like this. To deal with that dilemma, I have developed two different standards that could be defended for DeKalb County; one a broad standard, and one is a narrow standard.

By the broad standard there's no school out of the faculty out of balance. With the narrow standard, which is plus or minus five percent allowance for high schools and a plus or minus ten percent variance for elementary schools, which have much smaller faculties, I tabulated and show that there are six elementary schools that fall outside the narrow balance standard, and there are two high schools that fall outside the narrow balance standard, although, even in the—even in the highest percent black faculty none is over—none has a majority black faculty even though the schools are majority black student-wise and even the lowest percent black faculty there are 13 percent black faculty members in that [69] school. So there is some distribution in every school.

In terms of the right-hand column of the lower part of the table shows the number of teachers, sort of the—the number you would have to shift from these schools to attain balance within those standards, and I did this to show—in fact, it's one of the reasons why these balance standards are very, very difficult to implement in practice, because in a small faculty a shift of only one teacher or the race of one teacher causes a fairly significant shift in the percent black faculty.

If I could reassign or wave a wand and reassign 13 teachers or so, 14 teachers, in these eight schools, I could have them all within the narrow standard category.

So, out of a total faculty of some, I believe, almost 3,000 or 4,000. I don't have that number with me, it's a very, very small number of teachers that would have to be shifted to essentially attain perfect balance. Therefore, even though I don't—the standard is somewhat arbitrary.

Whatever standard one adopts, I think a reasonable standard, that there wouldn't be very many schools or faculty members that would be out of line with that standard.

Q. And you, in each instance, both with the broad standard and with the narrow standard, you chose a different number for high schools and elementary schools, and why was that, Doctor Armor?

[70] A. Well, the reason for that, and I will admit this is perhaps novel, but is the fact that the average faculty is about 70 for high schools and about 30 for elementary schools. If you adopt the same standard for schools with different faculties, you can create great difficulty in the management of your faculty and specialists and people that have certain skills which are not distributed uniformly across the faculty members, and a change of one teacher in a faculty of size 70 is about one-third of the time—the amount that a change of one teacher is in a faculty the size 30.

Therefore, in order for the change of a teacher to have the same effect on the shift of racial composition, one ought to have a broader, a somewhat wider variance for elementary schools than for high schools. This also relates to what we call measures of standard deviation or standard error in statistical studies, that there's more natural variation and random variation the smaller the group of persons you are dealing with, but from a management point of view it would be very, very difficult to manage—districts have trouble managing very narrow standards that are applied to very small faculties.

Q. Have you formed any opinions or conclusions with regard to the faculty balance in the DeKalb County School System?

A. Yes.

Basically, for the past several years, in [71] particular, I think the faculty is very generally in balance. If we had a standard to adopt, only a few—that would be reasonable, in my opinion, of what reasonable would be,

only a few schools would be out of line with that standard.

Q. Why did you choose 1986 data?

A. Oh, I looked at a number of years. Actually I thought '86 would be a conservative year, because it has a few more schools that are out of balance or out of balance with my general standard in '86. As I went back to '85, '84, there were fewer schools out of balance, so I chose '86, because I thought it was the most conservative approach in terms of choosing several years.

It also illustrates, by the way, that with these small numbers and small faculties at the elementary level, that it just—you have got year to year variation that is really quite significant. You know, the race of one teacher change is a three percent deviation for the percent black at the typical elementary school, so you are going to get some variations from year to year.

But '86 is the most conservative year from the point of view how many schools are out of line.

Q. When you were on the school board in Los Angeles did you have experiences with regard to the assignment of distribution of teachers in the L.A. School System?

A. Yes, I did.

[72] Q. Okay.

What approach did the school board in Los Angeles take with regard to teacher transfers?

A. Well, this is a very difficult problem. Actually, it's a difficult problem in any school district that wants to maintain an integrated faculty at all schools, and it's not unique to Los Angeles, although I know perhaps a bit little more about that one as a board member than other districts in terms of the actual implementation and what you try to do.

We have a very strong teachers' union, and wherever there's a strong teacher's union throughout the country there is general opposition to mandatory transfers. There is no mandatory transfer policy in Los Angeles. By the way, even if you have a mandatory transfer policy, no

one can force a teacher to stay at a school, so there is no automatic answer just by having a mandatory transfer in terms of, let's say, integrating a school faculty or getting a certain kind of teacher or type of teacher at a school, because you can assign them, but they don't have to go, and we have teacher flight, as has been documented just as we have documented student flight from various kinds of mandatory assignment plans.

In Los Angeles we have a voluntary approach, and we have used incentives, that is, we—it's a large district. Most of the white teachers tend to live in the far western parts of the Los Angeles District, which is about 65 miles [73] across literally, and most of the minority teachers tend to live in the minority sections or the eastern parts, central and eastern parts of Los Angeles with a mountain range called the Hollywood Mountain or San Fernando Mountains in between. We developed economic incentives. We pay teachers more to teach in the central and minority areas of the city, and I believe it's about $2,000.00 a year.

Q. Were these incentives successful?

A. They helped a little bit, but, by and large, they were not sufficient to overcome the teachers' preference to teach in schools near where they live. It is an approach, but I don't think it is a very successful one.

EXAMINATION

BY THE COURT:

Q. Doctor, is the Los Angeles Board of Education a countywide board of education?

A. No, sir. It's a city board.

Q. It's a city school district, not a county?

A. Not a county, although—

Q. Not quite as large as Los Angeles County, then?

A. Not quite as large, although probably covers about three-fourths of the county population and about half of the area. It is a very, very big district, about 600,000 students.

Q. Geographically larger than DeKalb County?

[74] A. Oh, I would say—yes, I would say it's larger. I don't know exactly how much larger it is.

DIRECT EXAMINATION

BY MR. WEATHERLY:

Q. Doctor Armor, have you had discussions with representatives of the DeKalb County School with regards to the possible reorganization of high schools into a junior high concept?

A. Yes, I have.

Q. What is your understanding of the purpose of such a reorganization?

A. Well, this is something that has been discussed in DeKalb County for some period of time. It is motivated, I think, primarily on the part of the superintendent and board members by educational concerns that are really common in most school districts and throughout the educational community. Junior highs have not existed in DeKalb County, although they have become certainly commonplace throughout most of the country, and I would say probably the majority of educators believe that junior highs are a preferable form of educational grade organization, because they—the junior high years are difficult transition years for children as they go from essentially very young ages to the teenage status, and those transition years create some real challenges in terms of the kind of curriculum and how you organize your faculty and the [75] kind of people who teach well at those grade groups. So I think for those kinds of educational reasons the district is interested in developing junior high school systems wherever feasible.

Q. Have you made any analysis of possible combinations of high schools in DeKalb County in junior high programs?

A. Yes, I have.

Q. And what information were you provided for purposes of making this analysis?

A. I had, of course, I had the enrollment data, the existing enrollment and past enrollment data for these high schools—for high schools in the district. I also asked for projections of enrollment for a number of schools in the central part of the district and some tabulations of M-to-M enrollments in those schools, separate tabulations by grade level. I also used—

Q. Doctor Armor—

A. Excused me. I asked for capacity information on some of these schools.

Q. Doctor, what was your approach in making this analysis?

A. Well, the issue basically, if the district is going to transition to some junior high schools, is the question of how to do this in such a way so as to further desegregation, because that will be a consideration, obviously, when they make these decisions, and they have made some proposals so [76] far.

My approach was to see if I could come up with some combinations of junior—of two high schools, I don't know junior high and one senior high, that would be integrative or, let's say, furthering the integration compared with what we have now, and obviously what was suggested—what is suggested by a map is to try to work on some combinations in the central part of the district to further integration.

Q. All right, sir.

Have you prepared an exhibit that reflects the results of this analysis, Doctor Armor?

A. Yes.

Q. Would you identify Defendant's Exhibit 185, please?

A. 185 is our—some projected resident enrollment for various junior and senior high combinations or, I should say, combinations of existing high schools into junior and

senior high combinations, and I show three such—I show three such combinations here that I can go into.

Q. All right.

Would you please do that, and move the high school attendance map a little closer to you, and perhaps you can point to that as you are discussing the schools, Doctor Armor.

A. Basically, as you look at the district in terms of the possibility of a junior high plan, we know that roughly north of Ponce de Leon and—what is this?

[77] Q. Rockbridge.

A. —Rockbridge Road, the schools tend to be—and the residential areas tend to be predominantly white, south of that area, at least in the western part of the county, predominantly black, and we have some well-integrated schools that we have talked a lot about here, Redan and Miller Grove and Lithonia to the immediate east, and because of Redan and Miller Grove and the fact there is good and reasonably stable integration in this area that will probably continue for some time, and Lithonia also tends to be a well-integrated area, what one would look towards is try to combine some of the predominantly black schools just below that road with some of the predominantly white schools just north of that area to see if you could come up with some integrated—some pairs that would be more integrated and would have prospect for more long-term stable integration in the district.

So, the schools that come immediately to mind, looking at the map, would be Towers, Avondale and Gordon, being the three schools or whose attendance zones are immediately adjacent to zones of predominantly white schools of Druid Hills, Shamrock and Clarkston.

In the case of Druid Hills, of course, and Gordon we do have the geographic separation caused by Decatur and east Atlanta, but, in terms of looking at where Gordon might go ideally if it was going to go anywhere, it is not too close, [78] but, if it was to go anywhere, you

would look at Druid Hills. So I have tried that combination.

Then I worked my way eastward, I tried Avondale with Shamrock, and then I tried Towers with Clarkston. I didn't try Stone Mountain because there isn't very much—because I have got white schools already adjacent to or in between Stone Mountain and the black schools.

So that those were the three pairs that I tried. Other combinations would be possible, but I think these three combinations are representative.

The second thing that I did is I eliminated the M-to-M population. This is not exactly realistic, and I'm going to come back to that, but the issue here is, aside from M-to-M's what does the population look like in these schools over the next several years, because they seem kind of logical for further integration, and that's where the projections come into play, because we will see in these various combinations the size of the resident minority enrollment at Towers, Avondale and Gordon, and the projected minority enrollment that is going to be taking place at Clarkston and at Shamrock, that, even without M-to-M students, there are more minority students than there are white students from the point of view—from my point of view of forming a long-term, stable desegregated combination.

So, for example, the Tower/Clarkston pairing or [79] junior high/senior high combination by 1989 would be 69 percent minority, and the prospects would be for further white decline to take place until it was all minority.

The Shamrock/Avondale combination would be 58 percent minority by 1989, but, again, a declining—an increasing minority population and a declining white population, not a good prospect.

The Gordon/Druid Hills/Briarcliff basically the same; the percent minority projected by 1989 would be 66 percent minority and, again, a declining white population and increasing minority population.

Basically any combinations of these six schools that you try, which would be reasonable because they are adjacent to each other and reasonable candidates from a purely geographic point of view would not produce a stable residential population, not to speak of the M-to-M population that is already there.

Q. Now, you mentioned the fact that you excluded the M-to-M population. Is that reasonable, Doctor Armor?

A. No, it's not reasonable in the sense that you would not, I don't think, realistically be able to remove the M-to-M students at Shamrock, of which there are 300, and can, in fact, if I add the 300 M-to-M students at Shamrock, I now have over 60 percent minority by 1989.

One might be able to transition them, you know, not [80] allow more in, and do a transition scheme. Over time you could reduce that number if no new ones were added, no M-to-M's were allowed to transferred in, but in the meantime you have made the combination even more minority, and by the time you transition the M-to-M students out you have reached 1989, and you are going to have a resident population that is declining and is predominantly minority. So, the M-to-M simply makes a situation that's already not very promising worse.

Q. From this analysis did you make any recommendations to Doctor Freeman?

A. Yes, I did.

Q. And what were those recommendations?

A. Well, my recommendations from the point of view of future stable integration, rather than looking at these pairings that I have shown on my exhibit, I suggested that he look very closely at a pairing between Shamrock and Clarkston, because he's already paired Briarcliff and Druid Hills, or is about to, about to do that this fall.

And the reason for Shamrock and Clarkston, while we are predominantly minority—I mean white at the present time, if you look at the projected enrollment for Clarkston, one can see that by 1989, which is only what, three more years from this fall, it is projected to be a

fifty-fifty school, and I think this is prudent planning in this [81] desegregation field to look at projections and take some steps that may not seem immediately necessary at the present time, but based on population movements and projections, like we did with Redan, to anticipate that by forming a combination there you will have assured a pretty well-integrated school, stable integrated school for some years into the future beyond 1989. So, I have recommended that he look closely at that combination.

Q. All right, sir.

Did you review the testimony of Dr. Herb Walberg given on July 9, 1987?

A. Yes, I did.

Q. Were you a participant on the N.I.E. panel with Doctor Walberg?

A. Yes, I was.

Q. What conclusions did you reach as a result of your study at that time with regard to the effect of desegregation programs on achievement?

A. The results of my analysis of the I believe it was about 28 selected studies that the panel viewed as the most rigorous studies, field experiments done on this topic, was that there was no significant impact of desegregation programs, that is, racial composition programs, on blacks' achievement. Black students in desegregated programs, once you control for appropriate things, are not any more likely to achieve better [82] than black students in segregated schools, again controlling for their background characteristics.

Q. Do you agree with the conclusions by Doctor Walberg in his testimony on July 9th with regard to the impact of desegregation programs on black achievers?

A. Yes, I do.

Q. Doctor Armor, have you reviewed exhibits which have been prepared by the DeKalb County School Sys-

tem comparing achievement between black and white students in the county?

A. Yes, I have.

MR. WEATHERLY: I may, Your Honor, take one moment.

BY MR. WEATHERLY:

Q. Defendant's 114, do you recall having seen that?
A. Yes, I have seen this.
Q. And Defendant's 110?
A. Yes.
Q. Defendant's 112?
A. Yes.
Q. And 115?
A. Yes.
Q. 105?
A. Yes.
Q. 230?
A. Yes.
Q. 119?
[83] A. Yes.
Q. 117?
A. Yes.
Q. 137?
A. Yes.
Q. Lastly, 234?
A. Yes.

Q. Have you formed any general impressions, Doctor Armor, from your review of these exhibits?

A. Yes.

Q. And what are those impressions, Doctor Armor?

A. Basically these exhibits and these tabulations illustrate the relationship between race, academic achievement, socio-economic characteristics that I should say illustrate what I think is common findings in this field of the pattern of black and white differences in achievement and their relationship to various socio-economic and other kinds of background characteristics.

Q. Does it give you any indications with regard to the comparison of DeKalb County black students with black students nationally?

A. Yes, it does.

There have ben a number of national studies done, starting with the Coleman Study. There's sort of—I could probably summarize these findings in two or three parts.

[84] First, of all, it has been observed, and it has been observed in most school districts and in most national studies, that black achievement tends to be lower than white achievement, in general, and, secondly, that achievement is strongly associated with a variety of socio-economic and family background factors that are normally used to explain the reason for black and white achievement differences, that is, they have different family backgrounds, different economic status and so forth, and these exhibits certainly reflect that.

And I guess, finally, that the difference in achievement patterns between black and whites students can be observed at the beginning of school, that is, before the school process has even taken place, at the kindergarten level, the same kind of differences that one observes throughout the elementary grades, and this analysis can be observed in kindergarten, and it illustrates the very powerful impact that family backgrounds characteristics have on achievement and the fact that school systems have a very difficult time through school programs alone overcoming these differences.

Q. Are these the impressions that you have just testified with regard to, are they consistent with studies that you have done on achievement?

A. Consistent certainly with my studies and probably with [85] most studies that have been done in this field in the last 20 years.

Q. All right, sir.

MR. WEATHERLY: Your Honor, I have no further questions for Doctor Armor. I may see if there are any stray exhibits?

THE COURT: Do you have cross-examination?

MS. WILDE: Yes, I do, Your Honor.

MR. WEATHERLY: Your Honor, I would like to tender Defendant's 39, 180, 179, 9, 217, 181, 182, 2, 7, 5, 4, 60, 61, 185, 6, 3 and 8.

THE COURT: 6, 3, and 8?

MR. WEATHERLY: Yes, sir. May I have one moment?

THE COURT: All right, sir.

MS. WILDE: I believe 217 is what he was calling 8.

THE COURT: I was going to say there was no 8.

MR. WEATHERLY: It is 217, Your Honor, that's correct.

THE COURT: Better not listen to those others.

MR. WEATHERLY: Yes, sir. Can be dangerous, Your Honor.

MS. WILDE: Your Honor, I object only to the introduction of 179 and 180. They were identified. They were never connected up. They have absolutely no relevance to this exhibit. Those are the two Redan exhibits you pointed out.

[86] THE COURT: From the previous lawsuits.

MS. WILDE: Yes, sir.

THE COURT: I have indicated I would allow wide latitude on exhibits in this case, but I have some concern with that.

All right, as to exhibits—Defendant's Exhibits 2, 3, 4, 5, 6, 7, 9, 39, 60, 61, they are admitted. 179 and 180 I reject. 181, 182, 185, 217 are admitted.

MR. WEATHERLY: Thank you, Your Honor.

THE COURT: All right, anything further?

MR. WEATHERLY: No, sir.

THE COURT: All right, we will recess, then, for one hour for lunch.

(Noon recess)

THE COURT: Doctor Armor, come back to the stand.

DR. DAVID JAMES ARMOR

having returned to the stand, testified further as follows:

CROSS EXAMINATION

BY MS. WILDE:

Q. Doctor Armor, you are an advocate of voluntary desegregation plans, are you not?

A. My studies have tended to show voluntary plans in most cities, large cities, and areas like DeKalb County are more successful than mandatory plans.

[87] Q. And among those are things like M-to-M programs and magnet schools, is that right?

A. Those are two of the primary components for a voluntary program, yes.

Q. And you believe that student dsegregation or integration, I have heard you use both on the stand, can be somewhat successfully accomplished in that fashion using those voluntary tools, right?

A. Not only successful but in many cases more successful than mandatory plans over the longrun.

Q. And no one in this case, including plaintiffs, has sought a mandatory bussing remedy since '68, have they, to your knowledge, Doctor?

A. I'm not exactly certain what the plaintiffs have sought over this time period.

Q. Well, indeed, as you said in your survey, you found that at the very least the black community split fifty-fifty at this point as to whether the black community would support bussing?

A. That's very much correct, yes.

Q. And I believe you are a proponent of magnet schools, right?

A. I believe that you can offer effective desegregation, yes.

Q. And you have recommended them in a number of places, [88] including, I take it, Pulaski County and Little Rock and those places?

A. Yes, I have.

Q. And you were a member of the Los Angeles Board of Education at the time they adopted a magnet program, were you not?

A. They largely had been adopted before I came on the board, but we did adopt a number.

Q. Can you tell this court a little bit about some of the more successful magnet programs and how they have operated?

A. Well, the—probably the first contact I had with magnet school programs would have been in San Diego. I haven't had a recent update but in the first several years of their voluntary plan they implemented several—a number of magnet schools, most of which over a period time worked quite successfully.

Los Angeles, of course, has quite a large number of magnet schools that are working quite well. Not all of them in Los Angeles work as well as San Diego because of some of the distances involved. Los Angeles has not had as good success with magnet schools located in predominantly minority areas as San Diego did.

Milwaukee has had some success with magnet schools, and so has Buffalo, and I believe there're some new programs going into operation that in Baton Rouge, Louisiana, they are [89] working pretty well, to name a few.

Q. When did the one in San Diego get started?

A. I believe it was around 1978 or '79 when the first few were implemented.

Q. Now, you conducted or prepared and had conducted as part of your work for this case a survey, did you not, doctor?

A. Yes, I did.

Q. And that's part of how you would recommend that a district would go about getting information that it needs in order to establish a magnet program?

A. Well, I think it is one of the—generally speaking, I have recommended a survey as part of the planning process. It is not the only factor, but it is helpful to plan—in planning magnet schools what programs are popular and would be successful.

Q. And it's the first time that any such survey has been conducted during the time you have been working in DeKalb County, isn't it?

A. Yes.

Q. Now, one of the things you found was that both black and white parents are interested in magnet schools and would send their children to such schools, right?

A. Yes.

Q. And, indeed, the survey response shows that 85 percent of the whites and 93 percent of the blacks would support a [90] program of voluntary transfers for special academic studies, is that correct?

A. Let me just pull out my exhibit here.

Q. Okay, fine. I think we are on Table Three.

A. Yes.

Q. And it also shows that schools would be supported, magnet schools, whether they were placed in black or in white neighborhoods so long as the racial balance of the schools was controlled at fifty-fifty, right?

A. Well, there is somewhat more success or I would project somewhat more success if it was in a white neighborhood than in a black neighborhood, according to Table Six.

Q. But, indeed, we have 51 percent of the whites saying that they would probably or definitely participate in a magnet program in a black neighborood, right?

A. Yes. But 68 percent said they would if it was in the white neighborhood.

Q. Yes.

I'm not saying it is any higher, in fact, it is lower, but, indeed, we still have more than half of the whites who are willing to give that some serious consideration?

A. Yes.

But let me explain that Table Six differs quite a bit from Table Three in terms of—I want to make sure I'm clear on the interpretation.

[91] These are not purely opinion or support opposed. These are questions about intentions, and intentions are a little different than "do you favor or oppose?" What are trying to get at here is the likelihood that people would actually participate in the program. For that reason I would not, and I have testified and analyzed in a number of cases that I would not expect all the "probables" to participate, and it is hard to say what fraction. Sometimes I use a rule of thumb of about half the "probables", but you wouldn't expect all the "probables" to participate. So I would be reluctant to interpret this as a majority of whites would participate in a magnet program in a black neighborhood.

Q. But you do have a substantial number?

A. I would expect a substantial number, yes.

Q. So, it is fair so say that DeKalb County parents will allow their children to travel at least 30 minutes to go to a cross-racial neighborhood in order to get a good educational program, is that right?

A. Yes, unh hunh.

Q. Indeed, as you have said in your deposition, race is not the consideration if the program is outstanding, right?

A. Let me put it this way. It is not that race is not a consideration as much as you can overcome whatever considerations, under the right circumstances, that race might offer if the nature of the program is sufficiently strong [92] academically, that that would outweigh strictly racial considerations, except you notice that there is a change when the school becomes two-thirds black so that race is still a factor, according to that table. When we talk about the racial composition of the magnet school itself.

Here you have to differentiate between the racial composition of a neighborhood which may differ from the

racial make-up of a school. So, I don't think it is fair to say that race is not a factor in this. In fact, race is showing up quite definitely as a factor. As you vary the neighborhood and as you vary the composition of the school you get a decreasing indication of support from the white families.

Q. Which argues—

A. So race is clearly still a factor.

Q. Which argues for maintaining the balance in your magnet schools somewhere in the neighborhood of fifty-fifty?

A. It argues for that. It probably argues further, and, although there's no particular example in the survey, I certainly—I certainly would, and I have, recommended magnet schools in transition schools, that is, areas that are not perceived as a completely and predominantly black neighborhood.

In the case of DeKalb, for example, there are areas like Avondale and Towers where there are still white neighborhoods in this school district. So, in the planning [93] process, to the extent that I had flexibility, I certainly would consider the location and racial composition of the neighborhood and of the school that I maintained.

Q. One of the things your survey shows is that you could put magnet schools in DeKalb County in either white or black or transitional neighborhoods and still have some white and black participation, right?

A. If it was maintained at fifty-fifty and the distances were moderate, I would say, yes, you would have participation, definitely.

Q. As a matter of fact, many schools districts have been able to attract significant numbers of white parents into a program that is located in a predominantly black school; that has happen other places, hasn't it?

A. That, indeed, has.

Q. And I believe you testified in your deposition that it may even—there may even be enough interest in magnet schools to put one or two programs in the predominantly

white or predominantly black areas where the distances might be a little greater?

A. Well, the question here is how many black—how many magnet schools one needs or should have, and that's a judgment that involves a lot of factors. One wouldn't necessarily, depending on all the conditions, want a magnet school in every single majority black school.

[94] Q. No.

A. If one was going to develop say two or three, I would certainly think of putting them in these transitional areas rather than in Cedar Grove or southwest DeKalb where the white population, particularly the north population that you would like to involve, it really would be a substantial cross-town drive, and I suspect you would harm your participation rates in this instance.

You have got to tailor this to the peculiarities to the district and, you know, how far the white concentrations are, especially those concentrations that you want to attract into the magnet program.

Q. Yes.

A. I just want to make it clear that for all of those reasons in my discussions I think the candidates for magnet schools would be Avondale, which has one, Towers; in particular Avondale and Towers.

Q. Your survey—

A. And some elementary schools are in those areas.

Q. Your survey certainly does support the fact you would have more interest in the transitional, but I believe you testified on deposition that there's enough interest that you could go beyond that in terms of where you did some of the placement?

A. You could, if it was necessary, if one felt it necessary, [95] one could go beyond it, but I would not—given the continuum that we can clearly see here, one would want to go for the areas—if it was a limited number that you wanted or needed to do, you would certainly go to those areas where the indicators would maximize a

success, because, if anything, you would want your magnet schools to be successful, and you would certainly make decisions to try to maximize it, both in terms of neighborhood and in terms of composition of the school.

Q. Doctor, if you were to go about designing a magnet school program for DeKalb County, what would be your next step?

A. Well, the next step basically after the survey would be to take a look at the actual facilities and composition.

One of the complications here is the very area that you might like to put magnet schools in tends to be among the most crowded areas in the district, so there are serious facility and capacity issues. In fact, it's probably fair to say that you really couldn't develop a—maybe one, but you couldn't develop even two or three without probably probably a major facility construction program in this part of the district, the middle part of the district, and that would cost money, so that's always of a concern to a school board.

Q. It is always a consideration?

A. Even beyond the school boards.

Q. Right.

Well, blacks will send their children to two-thirds [96] white schools, according to your survey in majority white neighborhoods. The schools to which white parents won't send their kids are those over two-thirds black in a black neighborhood, according to your survey, right?

A. Well, no, I wouldn't say there would be none. I just think that it becomes increasingly difficult. The survey it indicates that you might get some, but it might be—it might—the lower number that you get, of course, the lower resultant percentage of white it would be. So it's possible that, if you consciously set out to maintain a two-thirds black one-third white magnet school, that you might fail, that is, after the first year, first sign-up rate, that there might be some—that you didn't get as many for a third, might actually open with one-fourth or smaller. It might be a self-defeating situation.

Q. Don't those numbers argue for the importance of maintaining a racial balance below a two-thirds level in schools as a way to, quote, perpetuate desegregation?

A. Well, everything else being equal, which, of course, they are not, everything else being equal, a fifty-fifty school is the maximum racial composition that I have recommended in many cases, in many studies.

Q. I believe in your deposition you explained that one thing you could do with a magnet school—

A. I would just like to make sure, I don't say here that [97] fifty-fifty is the ideal. It is sort of the upper limit. In terms of stability, I suspect something in the range of 20 to 30 would meet even greater acceptance in terms of purely—we're just considering now the reactions of white families, so I don't want to imply that fifty-fifty is sort of the magic number. Many magnet schools recommend fifty-fifty, but from a purely stability point of view you might actually, if one could, one might have 25 or 30 percent minority, might even be more stable.

Q. Although those are the kinds of preferences you said you can override when you have a very good academic program in your magnet schools?

A. Yes, you can override them.

Again, it is a question of all these different factors contribute to the overall success. I didn't want to—all I meant was I didn't want to imply that fifty-fifty would be better than or more stable than or more successful than, say, a 30 percent minority.

Q. Going back to your deposition, I think you explained there that one of the things you could do with a magnet school would be to place it in a school that's in transition where you might expect over time that it would become predominantly black and the magnet school would attract enough whites to slow down or stop or reverse that process, right?

A. Yes, reverse the process or—not reverse it but slow [98] down the process as far as the school is concerned,

although it may not have any impact on the actual underlying housing patterns themselves.

Q. Another voluntary program you support is the M-to-M ram, isn't that right, Doctor?

A. Yes. It is a, generally speaking, it has been a very successful tool throughout the country and certainly here in DeKalb County.

Q. And your survey shows that people will change schools, meaning go longer distance than just to their home schools, for quality education, right?

A. Yes, again, depending on the trade-off for that individual parent.

Q. And, yet, only five percent of the whites in your sample currently are participating in the M-to-M program as opposed to 24 percent of the blacks, isn't that right?

A. That's probably somewhat lower than that.

Q. And your survey shows that an additional 39 percent of the blacks surveyed would be interested in participating?

A. That's correct.

Q. While most whites would not be?

A. That is correct.

Q. Doesn't that indicate that the whites are more satisfied with the education being offered in their home schools than the blacks are?

[99] A. Well, one might assume that, except that when you look at the overall satisfaction one does not find that strong a relationship. Generally speaking, that is, as a rule, that is true, that whites need some incentive other than—to overcome—something better than their home school in order to be willing to be transported, and many black families, not all by any means, but there are many black families who prefer to go to a predominantly white school, and that, in itself, is a incentive for them to take the busride.

Q. Let's address this quality question on your survey. It wasn't a home school specific question, was it, doctor?

A. No, it was not.

Q. As a matter of fact, the question read: "Generally speaking, how would you rate the quality of education in the DeKalb County public schools?" Isn't that—

A. Yes, that's correct.

Q. One of the conclusions you drew, I believe, from your survey is that M-to-M participation could be further expanded, is that right?

A. Well, I based that not just on the survey but also on the actual assignment rates that have been increasing every year for the past several years.

Q. How would you go about doing that, Doctor Armor?

A. Well, it's being done at a rate of about 500 additional students per year, and it has been happening for about five [100] years in a row. It happened again this coming year, so it is going to continue for several more years, certainly until—I would say the trend, especially at the high school level, will continue until—except for possibly the most further north districts, that the transportation ride is more than an hour or an hour or about, and until the schools in that sort of north central part or let's say some of the schools are already crowded in the eastern part, but basically until they are kind of full up and can take all they can capacity-wise I would expect it to continue.

Q. Isn't it true that the most M-to-M seats are available for blacks at least in the far north?

A. That's correct right now, yes. Most of the sort of central schools are nearing their capacity.

Q. So that it wouldn't—wouldn't special outreach programs into the black community for those schools be one of the ways to boost M-to-M, since that's where your seats are moving within the county?

A. I'm not sure I understand what you mean by "outreach" or what exactly do you have in mind there.

Q. I take it the numbers show that the blacks aren't going to the far north schools on M-to-M?

A. Well, I don't think they show that. I think they show that schools that might a few years ago have been considered north, and not have many have increased substantially in their [101] M-to-M enrollment, and I think that is certainly through true for Henderson and I think for Tucker, as those schools fill up, you have to open up opportunities further north, and I don't think I have seen a complete cessation of the possibility of continuing to move that north, but I suspect in Dunwoody and Peachtree that might be at some point harder to fill.

Of course, you remember that as the black population continues to expand in the central part of the district, and we have Avondale and Towers now, some of those schools aren't too far from Chamblee or Sequoia or Henderson or Tucker. So, it's very hard to put a specific limit on where it will stop.

Q. Well, you have only got 18 M-to-M students in '86-'87 in Dunwoody.

A. Let me take a look at my numbers here.

Q. Okay.

A. If you will indulge me, I have to get my glasses.

Q. I'm happy to offer you my exhibits. I'm not sure that's what you have seen before, though?

THE COURT: I don't think his question was with the exhibit, seing the exhibits. It was the ability to see the exhibits.

MS. WILDE: Sorry. I didn't understand.

THE WITNESS: Thank you.

A. I have 18.

[102] That's what I have got, too.

I show projections in terms of available seats for '87 at 230 and for '88 at 161, so we have got very low participation, and, yet, the available seats are pretty high up there.

A. Well, but you have got to look back now at the time. You see there's only 3 in '85-'86.

Well, this is what's happening, though, and this happens—it keeps moving northward, as seats close up, there's still a demand for this in the population. As seats —as schools fill up and lose M-to-M seats, the availabilities are further north, so, it went from 3 to 18. All that is saying is there's an interest there for those black students in Avondale and Towers.

Quite possibly, even though that's pretty far north, there's a potential of interest, and you can't, only two years with the trend, but we have gone from 3 to 18. It could be 36 next year. I don't know what the sign-ups are for this year, but it's possible it would continue growing, even that far north.

Q. Isn't that an area, though, where, if you had programs specially directed to try to sell those high schools to black students, you might, indeed, have some impact on the M-to-M choices?

Choices.

[103] A. If you tried to sell it? I don't think you need to sell the M-to-M program. I think it is really quite popular.

You take Chamblee at 7 in '82, 19 in '83, 36 in '84, 48 in '85, 55, and Chamblee is growing, and it's the next to the most northern school, so I think the limitation and the slower growths up there is simply the distance.

Q. I show 517 seats available, though, for next year. We are nowhere near that, are we?

THE COURT: Is that my chart?

MS. WILDE: It sure it. I didn't move it.

MR. WEATHERLY: I asked Mr. Evans if we might borrow that.

THE COURT: All right.

MS. WILDE: Why don't we get that back, and I will put up one of mine.

THE COURT: No, you go ahead. I know now—you go ahead.

THE WITNESS: Chamblee is up here.

THE COURT: I know where it was on the ground. I just wanted to see where it was on the map.

What's the one between Peachtree and Dunwoody?

THE WITNESS: That's the O.E.C. North. That's an open campus.

Sequoia, which is also up there pretty far, has gone from 12—3 in '82, 12, '83, 34 in '84, 53 in '85, 71, so [104] percentage-wise that's very rapid growth, and, again, as these seats fill up in the closer ones, those will be the ones that will be available, and you're going to see growth up that far north.

BY MS. WILDE:

Q. I show 388 seats available for Sequoia for next year?

A. Yes. That's probably about right.

Q. Forgive me, but you covered so many years, my level of organization is a little less than it normally is. I take it—and maybe we shouldn't switch. I'm more familiar with this map.

THE COURT: I just hope whoever manufactures that equipment doesn't manufacture defense equipment when we go to war.

BY MS. WILDE:

Q. I take it you would agree, Doctor Armor, that M-to-M is not having any desegregative impact on Walker, Gordon, Cedar Grove, Southwest DeKalb, Columbia?

A. No, I don't agree at all.

Q. Are those numbers going down in terms of the racial composition of those schools?

A. Well, the ratio percent is not going to change, but there are very substantial number of students from those schools, in fact, literally in the thousands, that are going to—that are being integrated in the M-to-M program. In fact, that's [105] where—those are all the sending schools. So, you are very definitely affecting the school when you take two or three or four hundred students out of it and put them in an integrated environment

where they would have been segregated without that experience.

Q. But you are not affecting the racial composition of the schools or making a different racially—

A. You didn't say racial—the percent black is the same, but you have affected the school very substantially. You have taken students out and put them in an integrated environment.

Q. You have not affected the school for any of the kids who stayed behind, are you, Doctor Armor?

A. No. You can only affect students who are participating, but that is substantial effect on the school, and certainly on the children that would have been at that school.

Q. I believe your testimony was that two whites impacted for every one black on the M-to-M program. Where does that number come from?

A. That comes from basically the number of white students at those receiving schools that have very large numbers of M-to-M students and without those M-to-M students the school would be substantially less integrated and in some cases predominantly white.

Q. So, those—

A. In averaging those you get about a two to one ratio.

[106] Q. So you are talking about this central band? You are not talking about north or south when you were dealing with that?

A. Let me see what I'm talking about. Briarvista —I'm sorry, I'm in elementary. Excuse me.

Q. Let's switch to secondary.

A. I'm sorry. Briarcliff, Crosskeys, Druid Hills, Henderson, Lakeside, Redan and Miller Grove and Shamrock.

Q. So we are not talking about Stone Mountain or Tucker or Dunwoody or Peachtree or Chamblee or Walker, Gordon, Cedar Grove?

A. No.

Q. The two to one wouldn't hold there?

A. The two to one won't hold. There are no white students at Walker. They are not receiving schools.

What I was trying to explain is that you not only affect the black students that transfer out, but you also affect the white students at the receiving school, so by definition the only school that can be affected are white receiving schools.

Now, for example, Clarkston, aside from the fact that it is fairly substantially integrated by residential minority growth there, it's got a capacity problem. You cannot —it's not a receiver not because of racial composition but because of capacity.

The same is true for Stone Mountain. There are [107] capacity problems at some of those schools, and that's why you have this sort of strange pattern of very substantial participation in the northwestern part of the county but almost none there. It is just too crowded.

Q. All I am trying to establish, your two to one doesn't hold for all the receiving schools, it's mainly for the central belt we identified when you were going through the list?

A. Well, it only is true for the schools that are, as I say, significant receivers, and you are not a receiver if you don't have any capacity left, or in some cases I think those northern districts, Chamblee, Sequoia, and even Peachtree and Dunwoody, will over time become increasingly integrated, and it's not because—I didn't want to count all those white students because the ratio is one student maybe for ten home school students.

Of those schools where there is participation, I'm only going to count two white students for every one incoming black student, but I think I should count something like that for all the receiving schools that do have some M-to-M, because, after all, those minority students are integrating some white students, or they are contributing to it, even at those receivers that have small num-

bers. My two to one was derived by just counting the ones where there were big numbers of incoming.

[108] Q. I take it you would advocate continuing the M-to-M program, Doctor, is that right?

A. Oh, most definitely.

Q. Let's talk a little bit about the attendance line testimony.

You would agree, would you not, Doctor Armor, that attendance zoning is a primary tool in desegregating school systems?

A. It can be.

Q. And the exhibit—

A. In fact, it was—I believe that was how the district was integrated in 1969, primarily by geographic—by drawing geographic zones.

Q. And I believe Defendant's Exhibit 60, which was the list of the attendance zones, shows 170 changes, is that right?

A. Yes.

Q. You weren't consulted on all of those at the time they were done, were you, doctor?

A. No, Ma'am.

Q. Your job today in assessing their desegregative or segregative facts is an after-the-fact assignment, right?

A. It's a historical study of the effects of all of these changes over the past ten years to see if they might—there might be some indication of potential effects on what we see today or what we see in southwest DeKalb today.

[109] Q. My understanding of what you did, essentially, was to assess the immediate compositional effect of the change determining whether it was more than five or less than five in terms of its effect, is that right?

A. That was the actual rule for classifying, but I actually had some trend data available to look as to whether there were any, you know, major changes in the trends, you know, plus or minus a few years around the change.

Q. Did you take into account the successive impact of change on other schools in the area in addition just to those two schools that you would look at on an attendance change?

A. Well, in some cases there were several schools involved like in the a school opening and a school closing, so you were affecting a whole number of schools in the vicinity.

Q. But, other than that, when you looked at an attendance line change, you didn't look at the region? You just looked at those two schools?

A. For that particular classification, yes.

Q. And you would agree that looking at the larger region may well be an important piece of analysis in terms of getting a sense as to what's happening at any given point in time?

A. I don't think the—the geography of the district is such that I really don't think it would make any different. In fact, I'm virtually certain it would not make any difference in the far northern regions, and it wouldn't make [110] any difference on a broader basis in the southwest region, because all the boundary changes north of the northern part of the district are all amongst schools, even if you went two schools over, it would be—it would be predominantly white, and the reason why there is no effect is because, for all the predominantly white schools and predominantly black schools, the net region is predominantly black or predominantly white, so whatever you do in that region is not going to have any significant impact in the region, much less the two schools involved.

Q. Doctor, you didn't have the data that enabled you to draw those conclusions, did you?

A. I don't agree. I think I have the data right here before me in terms of the enrollment of the schools.

Q. But—

A. If I've got ten schools that are all 99 or 98 percent white, there's no way—there is no possible way a bound-

ary change at a school in the middle of that could affect any of the schools surrounding it.

Q. Isn't it—

A. It's twice removed by definition.

Q. Isn't right true during the time when some of these transitions were taking place, and I believe we are talking about '69 to '86, that, indeed, on some of those if you looked at the larger region you would get predominantly white as well [111] as predominantly black schools within the same region?

A. You can see from the exhibit—wait a minute, let me get it—133—well, 166 of the changes occurred when the schools involved were predominantly white or predominantly black. The vast majority of those were in the northern—in the white case in the northern part of the district, in the black case in the southwest area part of the district.

There was a period of time when part of the southwest was still predominantly white. Those most of those boundary changes are in the mixed school category, so there aren't very many of them, and there's about, what, 23 or 24 of them out of the 170.

Q. I take it when you are called in to consult on attendance line changes you review data beyond the kind of data you had to assess these 170?

It depends on what is available. Sometimes I have more; sometimes I have less.

Q. Your preference would be to have more than you had?

A. Oh, absolutely.

Q. You were talking about the indexes dissimilarity and racial exposure on direct, as I recall?

A. Yes.

Q. And when you were describing the similarity index you kept using words like "pure racial balance" or "perfect racial balance." I take it that wasn't any qualitative assessment; [112] it was simply absolute numbers; is that right?

A. I think when I said "perfect racial balance" I meant every school would be—would have exactly the same percent as the district.

Q. So—

A. Percent black or percent minority.

Q. So, for example, if you had one black in each school, that would be perfect, and, if you had 50 blacks in each school, that would also be perfect in terms of how the dissimilarity index measures things?

A. As long as—yes, if the blacks were distributed to have the exact same number in every school, that would be perfect racial balance.

THE COURT: Same number or same percentage? She changed gears on you. You said "same."

MS. WILDE: I didn't change percentage. I said 50.

THE COURT: You said raw numbers, and he was saying percentages.

THE WITNESS: You are absolutely correct. That's what I was thinking.

BY MS. WILDE:

Q. I'm sorry.

A. Let's start over again.

Q. Numbers or percentages.

A. No. If the schools are different sizes, it would have to [113] be—it would have to be the same percent of blacks in every school to attain perfect balance.

Q. I take it the Relative Exposure Index, because it measures something slightly different, is one that has been more popular in circles that you favor over dissimilarity?

A. Popularity-wise, in the early days of this field the dissimilarity index was the only index. It has a longer history. It was used in residential studies initially, and just, by the way thoes things developed, it was the popular and common index.

Doctor Coleman, I'm not sure he invented exposure, but he certainly popularized it in his desegregation, his white

flight study of 1975. Since that time exposure has been growing in popularity in usage, because people have come to understand the different meanings the two indices have.

I think it is fair to say that a large number of the desegregation experts today prefer the exposure index or at least have to justify the use of dissimilarity when they do it. There are cases where dissimilarity should be used, because it is racial balance that one is assessing as opposed to racial integration in the contact or racial isolation.

Q. And I take it you and I believe Doctor Rozell tend to use the Racial Exposure Indexes?

A. Yes, and Doctor Coleman.

Q. We were talking a little bit about how these are done, [114] and I believe all your charts are done on white and non-white, is that correct?

A. That's correct.

Q. And, indeed, wouldn't you agree that, while you have got to make a decision as to how you do it, if you put your non-whites in a category rather than just having pure blacks, when you look at how blacks are distributed, you will get a different skew if you put other minorities in with blacks?

A. Well, not necessarily.

You know, up until 1981 there were—there were less than two percent other minority. I don't think it makes any difference at all on these findings and my conclusions, until the early eighties, what you do with the groups one way or the other. In fact, even at the present time there's five percent. I don't think it would make a very large difference even today.

But, if you have to combine them to express the total integration level in the district, my preference is to put them with minorities, because—for the simple reason that other minorities can't integrate blacks, you need to integrate blacks with white students, so the percent white in the school is the most important statistics. If you just

have the percent black in the school, if you have to choose between them, it would be 20 percent black, apparently integrated, or 30 percent, but, if you look and suddenly, of the whites, [115] almost all are Asian, I don't think it would be called an integrated school. So, you have to make a decision on what to do with the non-blacks.

Q. I understand.

Don't you have the flipside problem, though, if you wind up using an index that puts Asians, for example, in with blacks, you could have a school that looks to be well-integrated and, indeed, find out that what you have not is third world non-blacks in the school?

A. No, on the contrary. It's just the opposite of that.

It's the putting of them with minorities that makes it more—it is more difficult to integrate, because you are saying that only whites can integrate the black students, so it actually makes a harder case for you.

Q. I believe you said you were using Doctor Clark's underlying statistical materials in looking at things like the dissimilarity indexes and in making judgments about racial demographic patterns?

A. I'm only relying on Doctor Clark's analysis as part of input as to whether there was a residential transition going on, certainly not from my analysis of school indices. That's my own analysis.

Q. In 1980 he testified that the information he had was that there were 5400 others in the north, non-blacks/non-whites, and only 2,000 in the south.

[116] A. Is that housing data we are talking about? I suspect that it is.

Q. I suspect it is, indeed.

A. That's not school data. I guarantee you there weren't that many students.

Q. You don't have school data, though, do you?

A. What do you mean I don't have school data? I have tons of school data.

Q. Do you remember Doctor Clark indicating that the way—the place where you've got most of your 5400 folks

is along—non-blacks/non-whites is along Buford Highway, in that corridor?

A. What—do you have a document or some numbers on the population—

Q. I'm afraid I have my notes from his direct testimony.

A. We are not talking about students, for sure. We are talking about total population?

Q. I take it you would agree, if you have 5400 others in the north versus 2,000 others in the south, that you've got a few more in the north?

A. I'm looking for something.

Q. Okay.

A. If you will just give me a second here.

What year are we talking about?

Q. I was using his 1980 data, sir.

[117] A. Well, there's about 2,000 non-minority—non-black minority students in the district that year, but I have no idea where they are distributed. I would suspect that many fewer than that would be, from looking at school enrollment data over the years, would be in just that corridor.

Q. Don't you think—

A. Maybe a half. Maybe a third. Might be 500.

Q. You don't know?

A. Don't know for sure.

Q. Don't you think that the school patterns, since we are basically dealing with a neighborhood school district, would follow the demographic patterns I just gave you which is higher in the north by almost three times than in the south, Doctor Armor?

A. I just think I'm—I'm sorry. Now, are we switching away from—

Q. I'm?

A. —other minority—

Q. No.

I'm asking you whether if, indeed, the numbers I read from Doctor Clark indicate that the others are distributed almost there to one in the north wouldn't give you a clue as to where the other students are?

A. But the problem, from my analysis, is student enrollment. What I don't know from what your reading me is how many [118] students are in those schools in that corridor. I don't know offhand, and it's not in your record there, that's what would be relevant to my analysis of the indices.

Q. If, indeed, that's where you had very few blacks but you had lots of other minorities, wouldn't your indexes show exposure rates much higher as a result of those other minorities that had nothing to do with the fact that there were blacks in those schools, Doctor Armor?

A. I'm having trouble with the "If" because I know there are lots of black students in those schools in that area, Henderson, Lakeside, Briarcliff, Druid Hills, Crosskeys, very large numbers of M-to-M students.

Q. In 1980?

A. Well, I think so.

Q. How about if you just give me the "If" for purposes of the question so I can understand how these indexes work.

A. Okay.

Q. If, indeed, you have many minority non-black students in those districts and virtually no blacks, if your index includes both in the same category, won't you show a relative exposure that's much higher than the actual black rate?

A. If there were a lot, yes.

Q. Okay.

A. But I don't think that there are a lot.

Q. Indeed, Doctor Clark testified that the number of other [119] non-black minorities began increasing about 1980 and was going up from there; does that sound familiar?

A. Well, it was increasing very slightly. The student enrollment was about 2,000 in—2200 in '81, 2400 in '82.

It's about 200 student a year. It's not a very rapid or drastic increase during those years.

Q. Isn't 1980 about the point on your graphs in the Relative Exposure Index where they begin to go down again as opposed to kind of being level in the few years before?

A. No, they start going down in '77.

Q. But you get fairly substantial downs at least on the high schools between '82 and '86 on the one I'm looking at, right?

A. Yes. It's a little steeper between '81 and '84.

Q. And on the elementary—

A. But it still declining from '77 to '81.

Q. In the elementary your steepest looks to me like it's '80 to '86.

A. Well, it's declining from '77 also.

Q. But more steeply?

A. Well, a little more steeply.

Q. Okay, let's shift to Terry Mill. I believe you said that after the black schools were closed Terry Mill opened the next fall at about 70 percent black, is that right?

A. I believe something like that.

Q. Wouldn't you agree that the job that the court was trying [120] to undertake was not only to close the black schools but to insure that there was reassignment so you wouldn't have any predominantly black schools in '69? Wasn't that what they were trying to do?

A. I hesitate to try to read into what that court was specifically trying to accomplish in every school. Generally, it was trying to accomplish a geographic zoning system that would integrate all the schools into an assignment system.

Q. And you only had about five percent blacks at that point, right?

A. Total about five percent.

Q. So, if you got 70 in one school, you have got a fairly high concentration, 70 percent in one school?

A. But what's remarkable is there were only 50 percent the year before, and much—it's a case where I can imagine, unless somebody was doing more sophisticated projections and analyses than perhaps was typical at that time, that it would be—that it could be missed, and I suspect that perhaps it perhaps was missed. I'm just trying to find my numbers here, if you will bear with me for a moment.

Terry Mill was all-white with 700 students—I'm sorry, I have the wrong—no. As late as 1966 Terry Mill had only two black students in it, 590 white. Then in '67 it had 473 whites and 140 black. It went from less than one-half of one percent to 23 percent, but in '68 when the plan was [121] adopted it was a, fifty-fifty school, and then when it opened in '69 it was 76. So, it was a white school that was undergoing rapid demographic transition.

THE COURT: Where is Terry Mill located?

MR. WEATHERLY: It's right down in here.

THE WITNESS: It's right up here in this corner.

THE COURT: That's adequate.

THE WITNESS: In this corner.

THE COURT: That's, where you pointed, in the area that's almost surrounded by the city of Atlanta?

THE WITNESS: That's correct.

MS. WILDE: Right here.

THE WITNESS: Right here.

MR. WEATHERLY: That's right.

THE WITNESS: It is literally surrounded, almost surrounded by the city, and that is the, if you look at the census data which—excuse me. Well, somebody covered up my map there—

MS. WILDE: It wasn't me.

THE WITNESS: You will see it is precisely those census tracts where sort of the corridor where black expansion first began in southwest DeKalb.

THE COURT: That's just beyond the East Lake gerrymandering of the city limits, isn't it?

MR. SAMS: Yes, sir.

[122] THE COURT: That's exactly what it was. It was gerrymandered for years in the city limits so they could have liquor license.

MS. WILDE: You do that in Evanston, too, Your Honor.

THE WITNESS: There's also a very large housing project that I believe is predominantly black in this country club area.

THE COURT: That's where I am talking about, the East Lake Country Club.

THE WITNESS: That's exactly right.

THE COURT: That's what I am talking about. That's the part that juts out this way, is it not?

THE WITNESS: Yes.

MS. WILDE: That's not.

THE COURT: Part of the city that juts out like the—

THE WITNESS: That is correct. this little tip, although the country club, I believe, is up on this little projection

THE COURT: All right.

BY MS. WILDE:

Q. Indeed, that project is in the city of Atlanta, not within Terry Mill, is it not?

A. That's right. It's literally right on the border of DeKalb County, and I suspect that that could have been one of [123] reasons why this movement happened sort of in that corridor.

Q. Do you happen to know the race of the principal that was assigned to Terry Mill in 1969?

A. No, I don't.

Q. Would it surprise you if it were black?

A. I have no reaction. I have no knowledge of it.

Q. You don't? Okay.

You had talked some on direct, Doctor, about housing preferences, and I believe your testimony was essentially that blacks prefer fifty-fifty and whites, when you start getting into 10 to 20 that's more ideal in terms of white housing preference, is that right?

A. Right, the ideal some composition of a neighborhood.

Q. And what you did was take that preference information and look at the distribution and essentially, as I understood your testimony, you were saying that, given what we know about distribution, the map looks about the same as you would expect; is that right?

A. That's one way of putting it, yes.

Q. You didn't do any opinion surveys of the actual people who were homeseekers at the time you did either Atlanta or for this case itself, right?

A. The survey I used in Atlanta was done by Doctor Marks in the late sixties, and it was a—it was a racial composition [124] of neighborhood preference question of the residents of the Atlanta area.

Q. And that was the one that gave you the kind of fifty-fifty, 80-20 kind of results? That was the direction of the question?

A. That's correct.

Q. I believe your conclusion was, given those kind of residential preferences, as a rule, stable integrated neighborhoods are not likely, is that right

A. That's one of the reasons, but there are, of course, other factors besides preference that get involved in housing segregation.

Q. If stable integrated neighborhoods are not likely, then isn't is true that the only way we'll have to really desegregate schools in this country are the kinds of voluntary programs you advocate, like magnet schools?

A. M-to-M and magnets, and, where possible, there are opportunities sometimes for a new school. There are sometimes opportunities for combining schools.

But there's no question that one is restricted by virtue of the housing patterns and by virtue of geographic attendance zones.

Q. Let's switch to the combinations. We were talking about junior high schools, I think, at one point?

A. Yes.

[125] Q. And I believe when we were talking about Exhibit 185—

A. Yes.

Q. —the question you had been asked was: How can we do this in a way that will create additional desegregation? Is that right?

A. That's correct.

Q. Isn't that a fairly new approach to the way you have traditionally worked in DeKalb County, Doctor?

A. No.

I think it was pretty consistent in terms of looking at —the motivation here is primarily educational, as a lot of the boundary changes or school construction has been, just in terms of serving the student population, and the question is, if you are doing something to further—for educational or facility reasons, you take a look at whether you can do it in such a way that would promote integration.

If I characterize it as the primary purpose of the combination was for integration, I stand corrected in that, because it's a consideraton to look at when one is making changes in school arrangements or zones and what have you.

Q. And it was a prime consideration in your selection of these schools for purposes of these charts, right?

A. I'm sorry, now. I'm a little bit—my prime reason for selecting these schools, is that what you are asking me—

Q. Yes.

[126] A. —was because the only parts of the district that are available for combinations like that for integration is in the central part of the district.

Q. All I'm saying was that you were collecting selecting the combinations for integration, right?

A. I was trying to see if I could combine them in a way to produce a stable, since we are going to have combinations anyway, if I could do it in such a way that would produce a stable integrated school.

Q. Now, what is the projection for the district racially in 1989?

A. The total district?

Q. Yes.

A. I'm sorry, I don't have— what I have here, I don't have a sum, I don't have a total.

Q. Well, the reason I'm asking you, given the kinds of projections I'm seeing in some of these high schools, it looks as though you are projecting somewhere in the neighborhood of 55, 60 percent black at least by 1989 on these projections.

A. I don't think so. You mean for the individual schools?

Q. No. I'm talking about system-wide.

A. System-wide? Just a minute.

I would say probably by '89 about 56 percent minority at the high school level. I think you were a little high, but—

[127] Q. I thought I gave you 55 to 60.

A. I'm sorry. By '89, unh hunh.

Q. So, given that, something like Avondale/Shamrock combination is a 58 in 1989, would pretty much approximate the distribution in the district?

A. Well, that's—that may be, but that wasn't what— what I was trying to accomplish—

Q. I understands.

A. —was a school that would not be majority black. I wasn't guided by the district-wide trend, because, in fact, that may continue to be more minority, but that wouldn't

be the guidance for how you would combine schools to produce stable integration. That's a racial balance approach, but that wouldn't be the optimal approach for promoting integrated schools.

Q. When you put this together, I take it your premise was that you would do no alteration of any of the attendance lines in any of the existing high schools, right?

A. That's correct.

Q. So, if you talked about redrawing boundary lines, particularly redrawing some of them north, it may be that you could alter some of the racial compositions in the projections you have got here in front of us; isn't that right, Doctor?

A. I would say—I did not look specifically at that intent, but I would say if you were trying to do that, I think [128] it would be difficult to do that without a tremendous amount of change just because of the demographics of that area and the projections.

Q. We are talking about districts that you would be heading further up north in, right?

A. I specifically did not consider a wholesale redrawing of all boundaries to accomplish this. The question is can we combine schools that are adjacent to each other? I need to get back to the high school.

Q. Right.

So, for example, Clarkston, which is 25 percent white here, there's ways of drawing that in areas that are heavily white at this point, aren't there?

A. Yes. But what—you see, what you want to do with Clarkston, the projection here is a fifty-fifty school by '89, so actually, you know, you don't need—this is a crowded—this is completely at capacity. You don't need to do a bunch of redrawing of boundaries if you plan ahead. You have a white—predominantly white area at Shamrock which is mostly white, these are M-to-M students, this is predominantly resident students, black students, you know, you can accomplish integration by a

combination that is consistent with what the district wants to do throughout the area. You don't need to do boundary changes in that event.

Q. Well, but, Doctor, if you do that, if you do Shamrock and [129] Clarkston, aren't you, in essence, writing off the racial composition of everything below?

A. Well, I'm not writing it off. I'm dealing with the —the problem is there simply aren't areas that have enough whites on a long-term basis to integrate by this method these schools. It's a practical problem.

Q. And—

A. It's not writing them off. One would ideally like to have all schools integrated, but there are some geographic and demograhpic facts that you can't ignore—

Q. But can't you—

A. —that dominate—excuse me—that are driving or dominating your considerations of alternatives.

Q. All I'm saying is aren't there ways, for example, of drawing on Clarkston or Shamrock?

You have got fairly small number of whites as you had east and you also have got some areas where you could use some relief.

Aren't there ways of drawing the boundaries so you can give some desegregative relief to Towers and Avondale as long as you don't stay within the boundaries of the current high schools?

A. Well, when you say "give them relief," I mean, remember, all these percent at Briarcliff, at Druid Hills, Shamrock, Lakeside, Henderson, Crosskeys, and that's going north, are [130] giving relief to these students by having a white—predominantly white school that they are integrating.

Q. But not to the students who remain in their home schools?

A. No. And that's going to be—there's no practical way that one can integrate most of the students left in these home schools without—without a comprehensive

mandatory cross-county bussing program. There simply isn't any way way to do it.

Q. All I am saying, some of these home schools, there are ways of drawing district lines differently that would create some level of home school integration without writing off those districts?

A. You know, it may look like that to the eye, but I evaluated two attempts to just redraw boundaries, involved one attempt of about six schools, and one attempt of about nine schools. That was the rainbow and—I literally, I didn't do it, but they did it, they tried to redraw boundaries to get more integration at Redan other than Miller Grove, and both of them failed.

When you say I can redraw boundaries, you really have to sit down and try to do it. You may be able to do it, or you may not be able to do it.

Q. And were you—

A. I have done that in the past, and it hasn't been successful.

[131] Q. And we are, indeed, not at that stage, in the litigation, Doctor?

A. No.

Q. We are not drawing up plans?

A. I am trying to evaluate the possibility of junior high combinations, because I know it is something that the district is contemplating.

Q. And, indeed, those blacks who are, indeed, getting some relief, that's only by getting on busses, is that right?

A. They are riding busses to the receiving school.

THE COURT: Some of those are.

MS. WILDE: Most of them, Your Honor.

THE COURT: Some of them.

MS. WILDE: Yes. The M-to-M are.

THE COURT: Yes.

MS. WILDE: And, indeed, we do have exhibits on the number.

THE COURT: But there are some exhibits that go back several years that show those orange areas were

orange at a very early stage up and down that western border, too.

MS. WILDE: Your Honor, I don't have those. They are certainly in the record. I don't have them in my—

THE WITNESS: You mean resident blacks, sir?

THE COURT: They were yellow over there.

MS. WILDE: Well, Your Honor, yellow is ten percent, [132] and this is—yes, we have got one district that is ten percent, and it is very small.

THE COURT: No question, but they were there.

MS. WILDE: A few.

THE COURT: They were there ahead of time.

MS. WILDE: Yes. The M-to-M is not the total—

THE COURT: That's right.

MS. WILDE: —but there is indeed a substantial portion of the blacks in those districts.

THE COURT: The only point I am talking about is not everybody is bussed into there.

MS. WILDE: That's right, Your Honor, that's right.

THE COURT: All right.

MS. WILDE: I think I have about two more areas, Your Honor. I didn't know whether you wanted to take a break or me go ahead and finish.

THE COURT: You can go ahead.

MS. WILDE: Okay.

BY MS. WILDE:

Q. Let's switch gears again and talk a little bit about Singleton.

What is the Singleton Standard, Doctor Armor?

A. As best I recall, it's to have schools be substantially similar to the district-wide—the school faculties be similar in racial make-up to the district-wide percentage.

[133] Q. And what was the reason conceptually for the development or the importance of the Singleton Standard?

A. It was basically to integrate the faculty at the same time that you were racially integrating the schools.

Q. And to cut down—

A. And dual school systems, the faculties of a black school were all-black and of white schools all-white, so this came out of that era where one was trying to integrate faculties.

Q. And also to decrease the facial identifiability of the school by reference reference to faculty; isn't that right as well?

A. Well, I think racial identifiability is frequently another way of expressing a segregated faculty.

Q. What would compliance with Singleton be?

A. That's a difficult question.

As I said, because there is no single constant interpretation of that, the word "substantial," you see standards and definitions of all types, and, of course, there are very, very substantial educational reasons and school management reasons why you must have some flexibility.

When I was in Los Angeles there was a junior high school, when I was on the Board, that had—was right at the—L.A. was a plus or minus ten percent. You could go from 20 percent to 40 percent minority, because that was our—minority faculty, and there was a junior high school that had [134] exactly 20 percent, and it had lost a math teacher. There were no minority teachers in the district available who were math—in the math program. So, they had to use for several years a substitute teacher to teach math at the seventh grade level, because to hire a teacher, to bring in a regular teacher that had a math background would put them at 19 percent.

That's just an illustration of the difficulty of managing faculty, because you don't have a uniform distribution of teaching skills in areas by race. If you did, there wouldn't be as much of a problem, but you don't, and, if you don't have some flexibility, you end up doing some very, very strange and harmful educational practices just to make a racial balance.

Ironically, at this junior high school was 50 percent minority because of the voluntary bussing program, so

minority students were being deprived of a seventh grade math teacher because of an arbitrary rule that says that you can't have 19 percent minority faculty, even though you can't find a replacement for your math teacher, so you could stay within the compliance.

Q. I take it none of the courts have been trying to cut teachers in half when you sets standards?

I mean plus or minus one teacher is about as low as the Singleton compliance standards go; right, Doctor Armor?

[135] A. I don't know of an actual case personally. Most of the cases I know of are more like plus or minus ten, sometimes plus or minus five, sometimes plus or minus fifteen. They certainly do vary all over the place.

Q. Where did this broad and narrow standard that you are using originate?

A. Well, it is an attempt to reflect the fact that nationwide there are different standards that have been used and adopted and approved by courts as complying with the Singleton concept.

Obviously, you can find cases to support a very liberal standard. You can find cases to support a narrow standard. I just took two—

I would say going much below the narrow standard is, again, very, very difficult to maintain managing your teacher force. I'm not saying it couldn't be done, but it would be very difficult.

Q. I take it you have not specifically looked at of the Fifth and Eleventh Circuits to determine what those ranges are? That was not your consideration?

A. I'm just familiar with generally there's a wide variation of what the standard is nationwide.

Q. I believe you testified that it was, I believe your word was it was perhaps novel to have a different standard for elementary than for high school?

[136] A. Well, I'm not aware—I can't point to a case where there has been—I'm not saying there isn't a case where it's different, but I can't think of one. It

makes a lot of sense to me from a statistical point of view, given the sizes of the faculty.

Q. Aren't elementary school teachers, because of the way they do certifications, somewhat more fungible commodities than high school teachers in their specialties, Doctor?

A. Well, yes, but now you have all this growth of specialties. Specialty is the name of the game in education today. You have all kinds of specialists at the elementary level. They are all going to come under the faculty proportion rule.

So, maybe 20 or 30 years ago they were fungible, but they are less and less fungible these days, especially for specialists that may be very disparate racially. And remember a change of one teacher in the average DeKalb County Elementary School is a three percent change in the racial composition of the school.

Q. Let's get do that.

DeKalb County has about 30 elementary school teachers per school, is that correct?

A. 29 to be precise.

Q. So, we are talking about three percent a teacher?

A. 3.3, three and a third per teacher.

[137] Q. If we use this plus or minus 15 percent standard, we would have a 30 percent spread, right?

A. Well, I believe—just a minute.

Q. Isn't 15 above and 15 below 30 points?

A. Yes. the spread would be, if you adopted a broad standard, 13 to 43 percent.

Q. And how many teachers would that spread represent? Do the math with me. Isn't it somewhere in the neighborhood of nine or ten?

A. Let's see. Yes, it would be—well, let's see. I don't want to—I see you have done the math, but I didn't.

Q. I didn't use a calculator. Feel free.

A. It would be—it would be nine teachers.

Q. So we are not talking about having one teacher off? We are talking about a 30-point spread where you

could have nine fewer blacks than the maximum or nine more blacks than the minimum and still be within your definition of a broad standard?

A. I wouldn't want to be misunderstood here. A standard has to have an upper and lower limit. That doesn't mean that the goal would not be to attain as close to that standard the actual as you could, but there will be a variance, a distribution around that.

So I certainly would not recommend or expect a district in practice to put everybody at the lowest and [138] highest ends. That would be—if your goal is to try to hit the average, what would happen, then, is that there's some variation around it. In fact, in DeKalb County, it does. Most schools cluster right around plus or minus a couple of percent, but then there are these tails of the distribution. That's the question. You have got to cut it off somewhere, and it doesn't mean to imply that you would let the rule operate in such a way that everybody could be either at minus-15 or a plus-15 and nobody in between.

Q. And, if you were doing plus or minus ten percent, that would be a 20-point spread, that's somewhere in the neighborhood of six, maybe seven teachers, somewhere in there?

A. Probably six teachers, yes, at the maximum and the minimum.

Q. So you could be as—from the lowest to the highest, there's a difference of six black teachers?

THE COURT: Or white.

BY MS. WILDE:

Q. Or white teachers?

A. Or white.

Q. Indeed, when you—I think I have lost which exhibit it was, but when you did this exhibit with the number of schools that are out of compliance and you have next to it the number of teachers needed to shift—

A. Yes.

[139] Q. —that doesn't represent number of teachers to get to Singleton; it's just number of teachers to get within that six-teacher spread?

A. That's correct.

Q. Now, my numbers at the high school that we have got is about 65 or 67 percent teachers at the school, is that right?

A. It's closer to 70, I think.

Q. Shall we use 70?

A. Yes.

Q. So, if you have got a plus or minus ten percent spread on high school teachers, how many teachers are we talking about?

A. About seven. No.

THE COURT: Fourteen, isn't it? Sever in each direction.

THE WITNESS: I'm sorry, 14, yes.

BY MS. WILDE:

Q. So, again, you've got a tolerance range that from beginning to end you could have a 14-point spread in there, a 14-teacher spread?

A. Yes.

Q. And, again, on this exhibit, you are saying the Columbia would need to reassign three teachers to even get within that 14-teacher spread, is that right?

A. Columbia would have to assign—I'm sorry, I lost you. Columbia would have to assign three teachers.

[140] Q. To get within that 14-teacher spread?

A. That's the narrow. Remember the narrow standard is plus or minus five percent.

Q. Which is the—that's the seven, is that right, half?

A. That's seven.

Q. So it would have to reassign three teachers to get within that seven teachers?

A. To get down to—to get below 32 percent.

Q. Right.

It would have to reassign more than that in order to get to Singleton?

A. To Singleton exactly, yes, it would be more.

Q. More like five or six, at least?

A. Right.

Q. Have you done any look at the turnover in these schools, Doctor Armor?

A. I have seen some turnover numbers, but I have not done any detailed analysis of it.

Q. Wouldn't you expect that if you have high levels of turnover in schools, then you would have more opportunity to change your Singleton balance without creating the kind of administrative nightmare problems you had in Los Angeles?

A. We have high turnover in Los Angeles, and we still have a problem, because, remember, the problem is, whether you assign or not, you have to find teachers that are willing to teach [141] there and not go somewhere else, and in the midst of a teacher shortage, which we have nationwide today, it is a very, very difficult task to impose a condition that a teacher does not on their own want to do, very difficult.

So, turnover, you might say it gives you an opportunity, but the fact that it exists tells you something about the difficulty of maintaining a stable faculty at that school. It is a double-edged sword. Because you have the opportunity to assign a teacher does not give you the guarantee that when you make that assignment the teacher will, in fact, go or be willing to come to your district and teach in that school. It's a problem Los Angeles has.

Q. Indeed, you would agree with me the turnover, high turnover, is an indication that there's something going on in that school that means teachers are not as interested in going or staying?

A. It is fairly well established that it is more difficult to maintain a stable faculty at schools that are predominately minority. It is true nationwide.

Q. Columbia —

A. White teachers.

Q. Columbia I show as having 22 positions filled in 1986 out of its perhaps 67 or 70, and, yet, we still have it at three below even your plus or minus seven teacher range. Doesn't that—

[142] A. It may very well be a difficult school to recruit for, quite possible.

Q. And I take it one of the other things this chart shows is that, indeed, you have got too many blacks, black teachers, in the black schools and too many white teachers in the white schools? That's the direction of the racial skew?

A. Only in the small number of schools that are—that are badly skewed. There are slightly more, yes, but it is not an enormous difference.

Q. So that, indeed, at Columbia, what you would be trying to do is attract more white teachers, which are predominant teachers in the teaching force and the ones who are easier to hire, right?

A. Yes.

But also having more choices available to them and more difficult to recruit, I mean, if you impose a condition of the assigning the school.

Q. You talked a little bit about incentives to try to help teachers stay in place so you have less turnover and less Singleton problems?

A. Financial incentives, yes.

Q. You said that helped some when you used them in Los Angeles?

A. It has some—I think we can—we could attract some younger teachers, but it was still difficult. It wasn't — [143] and those teachers, speaking of stability, the teachers—it isn't the permanent commitment. It's, I believe, it's a two-year, if you want to stay in the district, a two-year commitment or three year commitment, and those teachers try to transfer out at the end of that

time, so you may—the incentive may help a little bit, but you have that turnover problem again.

Q. I take it there are other incentives that could be developed to try to both change the situation within the schools and make it more desirable for the teachers?

A. Oh, yes. We do that, too, in Los Angeles.

Q. And what are some of the things you could do along those lines, Doctor Armor?

A. I think they are done here as well. I think compensatory programs and special programs, making the—keeping the facility nice and attractive.

Security is important, having a place to park their car. Damage to automobiles was, at least in Los Angeles, I don't know of this specifically in DeKalb County, but automobile damage claims in certain parts of Los Angeles were just extremely high. We paid hundreds of thousands of dollars because teachers' cars would be damaged, either theft or broken into or just sometimes vandalism, and it was a chronic problem, and it's another one of those things that, of course, makes it difficult for a teacher to stay.

[144] It is not a simple problem to solve.

Q. I believe another thing you testified about was that you had taken a look at some of the exhibits done by Doctor McMillan of the school system and also used by Doctor Walberg, is that right?

A. Yes, I believe so.

Q. I believe you testified that one of the things that they do is illustrate the relation between race, academic performance and S.C.S., is that right?

A. Yes.

Q. Let me show you Defendant's 117 which is "Free and Reduced Lunch Programs for Blacks and Whites."

A. Yes.

Q. Doesn't one of the things that that exhibit shows you is that even when you control for S.C.S., meaning have the people who qualify for low and reduced lunch—

for free and reduced lunch in both categories, whites still do better?

A. Well, it doesn't say—it doesn't say what you just said it says.

Q. Well, you—

A. You just said that you controlled for socio-economic factors. All you have controlled for is poverty—a poverty definition.

Q. And that's the only definition we have got going in the school system records, isn't it?

[145] A. Exactly.

But you don't want to mistake the fact that because you have controlled for free lunch status that you have controlled for the total cluster of variables that I refer to as family background and socio-economic background, because there's a whole series of characteristics that would also—I could have black students not on free lunch and white students not on free lunch and still have vastly different socio-economic differences between those two groups. In fact, there probably is.

Q. But here in terms of people who are participants in the program, that is a rough measure of S.C.S., would you agree?

A. It is a measure and it's better than not having it at all, but it's only a partial measure of S.C.S.

Q. And on that partial measure whites are still doing better than blacks?

A. Its suggests there is still socio-economic differences you haven't controlled for yet that are causing that difference.

Q. Or perhaps there are racial differences that transcend S.C.S.? Isn't that another possible interpretation?

A. There are some who believe that. I happen to believe that the predominant factors are a family background, in addition to free lunch, which is a good variable, but certainly not the totality of socio-economic status.

[146] Q. We don't always get totality in social science research, do we, Doctor?

A. No, expecially when you are using available school records.

Q. One of the things that is happening in these exhibits is I'm seeing differences in gains and percentiles.

I take it you would agree, would you not, Doctor, that to go four points between, for example, 38 and 43 is not —well, it's easier going—the lower you are, if you start in the thirties or forties, that there's a larger gain than if you start at the fifties or sixties?

A. The percent knowledge changes different. There's a difference in an absolute gain versus a percentage gain.

Q. If I have a four percent gain between 39 and 43, that wouldn't be any different than a three percent gain between 53 and 56?

A. Well, that's a very difficult question and a very difficult—you have to make a lot of assumptions before you can say that you should be measuring on a percentage basis.

On most standardized tests that corresponds to four questions, let's say, four five questions. Is it harder to get five more questions right when you have answered 60 percent of them right or 40 percent of them right? It is not clear that the percentage change model is the right one for learning.

[147] I could defend the absolute gain as well as the percentage again, particularly in the middle range of the distribution.

Q. But, again, if you have somebody going from—somebody going from 35 to 45 is not the same as someone going from 70 to 80?

A. Like I say, it depends upon your definition of what gain is. I'm comfortable saying that is equivalent educationally. Each person has gained five points.

Q. But there was further to go, if you started lower, and once you get close to the top it is harder to make a difference?

A. Yes, when you are at 95, yes, but at 70 you have 30 points to go.

Like I say, when you say that it is harder, you are now imposing a model of learning which may or may not be true. It may not be any harder to—

Q. I am just trying to assess these graphs.

A. Well, I just don't want to agree sort of automatically or on prima facie grounds that it is harder to gain five points when you are a little bit brighter than it is to gain five points when you are a little bit slower. Other educational models might be quite the contrary.

If the difficulty you are having, you are scoring 30, it might be harder for the person who is low and has a [148] lower pace of learning to learn five more questions than a person who has higher levels of learning or higher learning levels. It just depends upon the precise educational model or learning model that you are using.

Q. So at least we can agree you shouldn't put a whole lot of weight on the difference between three or four points when one is in the fifties and one is in the thirties?

A. Well, I didn't say that either. I don't agree with that. It's still a gain.

Q. Whatever the gain means?

A. Well, it's a gain.

THE COURT: Well, the percentage of gain or percentile doesn't transfer into numbers or points or numbers of questions, does it? On the bell-shaped curve in the middle five percentage points may just be one question, whereas out on the outer limits of the curve it may take many questions to make a—

THE WITNESS: Other way around actually.

THE COURT: Other way around, the converse of it.

THE WITNESS: In the middle range its approximately true. When you get out to below the 20th percentile and above 80th percentile, you start having a major difference, but I think in the middle part of the ranges it is roughly equivalent. If I had a normal table

here I could look it up, but I don't think it is terribly different.

[149] BY MS. WILDE:

Q. Staying within the realm of achievement, but switching slightly to another topic, Doctor, I believe you said one of the things the panel concluded, that was looking at desegregation and educational achievement, was that there was no specific impact of desegregation on black students' achievement, is that right?

A. Well, the panel, that was my particular study. There were seven papers submitted and one overall summary paper, and some said there was no effect. The overall summary paper written by Dr. Thomas Cook said there was a very small effect.

Q. Isn't it true that there really weren't educational enhancements built into most of the school desegregation decrees in the first place?

A. I think on the contrary, I think generally speaking desegregation programs are usually accompanied by educational improvements at the same time, as a rule.

Q. Programs mandated in the decree or—

A. Well, usually just as part of the overall transformation of a district. I suspect there are those that just do racial balancings, but usually there's much more than that. There's in-service race relations programs. There are—it is not uncommon to have compensatory programs at the same time that you are implementing this. Of course, the hypothesis being tested in that study was precisely: does desegregation by [150] itself have an independent effect?

Q. And, so, that's what—

A. That's what we were testing. That's right.

Q. I obviously didn't ask the question the right way. Thank you.

What do you believe that the remedy in a desegregation case is supposed to accomplish, vis-a-vis, achievement?

A. Well, this is—it's a good question and a complicated one, because, if you go back in—I think if you go back into the history of desegregation, I think there's no question that the original purpose of this was to accomplish an improved educational outcome for minority children, and black children in particular. I think that's certainly true in much of the psychological theory and evidence that has been submitted and testified to and even referred to in many court decisions. So, I think—and for social scientists it certainly has been a prominent.

I think improving educational outcomes for children has always been a strong objective, you might say, of desegregation.

Q. So, what, in your view, have been the benefits or successes of desegregation efforts over the past 20 years?

A. Well, I think they have done a lot to increase desegregation, but we haven't been able to show that it has [151] specifically impacted on the educational process. Certainly social process and certainly the mere fact of integration, which we all as expire to and believe in, I do, has been furthered, but we have not been able to translate that into a specific impact on achievement outcomes.

Q. Isn't it true that part of what desegregation was designed to do was also to equalize distribution of resources, quite apart from the achievement issue?

A. Well, I think that it wasn't apart; I don't think it was ever apart. I think a view of the world at that time, especially when Doctor Coleman began his study, was that it was the unequal distribution of resources that was causing lower outcomes for black children than white children. So, there was a conception that tied resource distribution to educational outcomes, and most investigations and goals and hopes at that time were hinged upon if you change—resources weren't equal and, if you change the resource distribution, you would improve the quality of the outcome.

Q. Weren't you also trying to get some measure of racial justice in terms of having equality of distribution?

A. I think there's certainly value in that, and I think that's always also a part of it. I think the underlying objective ultimately has been to maximize opportunities and outcomes.

Q. Doctor, have you done any study or any check in terms of [152] what more you think DeKalb County can accomplish in the areas of resource distribution or even remedial programs?

A. I have not done any intensive study or any detailed study of that, of that issue in DeKalb County.

Q. I take it among the voluntary programs that you would advocate would be, indeed, remedial programs for black students?

A. Oh, I think most of the school districts do these days offer special educational programs to not only minority children but any child that is, let's say, performing before average levels on achievement.

Q. But specific remedial programs for black students are, indeed, part of the kinds of remedies you would advocate as part of your—

A. I advocate those kinds of approaches.

MS. WILDE: I think I'm almost finished, Your Honor. That's all I have.

THE COURT: Let's take our afternoon recess for 15 minutes.

(Recess)

MR. WEATHERLY: I have no questions, Your Honor.

THE COURT: Well, have you covered everything you will need with this witness before this case is over?

MR. SAMS: Only for the direct.

THE COURT: All right.

OPENING STATEMENT OF MR. SAMS

* * * *

[7] We have added a broad overlying factor to those also, Your Honor, which we have termed quality of education which really permeates throughout all those other areas but simply speaks to how well a school system is operating in the process which it is all about, learning.

And so our testimony, Your Honor, will be roughly in those six areas and a seventh area which we call quality of education.

We attempted, Your Honor, to present this evidence to you in very clear segments, but as we got into it we found there is a great deal of overlap, as one would expect. But, your honor, we would like to present evidence, and we would like to state first that we are very proud of our school system in DeKalb County.

We consider ourselves to have a high degree of excellence. We consider ourselves to have a number of professionals who motivate themselves and motivate children for learning.

We are in a situation of continuing to enervate learning processes in DeKalb County. We feel we are on the front edge of that type process in this state and in the nation.

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TESTIMONY OF WILLIAM FERGUSON SIMPSON

* * * *

BY MS. WILDE:

[147] And that wouldn't be true of someone who was just internally going to their own home school?

A. That's correct.

Q. Your intrigued me a little with the discussion of drivers. You said that routes are by longevity and where you reside or work tends to play a large part?

A. Right.

Q. What does that do to the racial composition of your driving force? Doesn't it mean that you tend to

have white drivers in the write school districts and black drivers in the black school districts?

A. We are about 40 percent overall in our black population as far as drivers are concerned.

We do have—I don't know the exact percentages in the black schools, white composition, the black-white composition of the drivers, but we still have a lot of white drivers in the southern part of the county which is our predominantly black area.

Q. And you don't have any figures on the breakout?

A. No, I don't.

Q. How about M-to-M? Isn't the M-to-M bus force predominantly black?

A. It's about 80, approximately 80 to 85 percent.

Q. And we are talking about the race of the drivers?

A. Right.

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TESTIMONY OF FRANKLIN DEAN GRANT

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[232] BY MR. GRANT: Art, music or P.E.

BY MR. SAMS:

Q. So most teachers hold all three?

A. No.

Q. Hold one of the three?

A. Yes, ma'am.

Q. So in terms of fungibility of teachers in terms of their teaching certificate, you have got about a four grade range in terms of where you can assign them based on their certification?

A. Yes. Unless they hold the one through eight.

Q. And then you have an eight grade assignment kind of fungibility. And that's different than in high schools, is it not?

A. Yes. The fields are more specialized, such as a Spanish teacher can teach Spanish.

Q. And may have a hard time with German?

A. Yes.

MS. WILDE: One moment.
Nothing further, Your Honor.

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TESTIMONY OF BOBBY NELSON STEPHENS

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[32] BY MS. WILDE:

Q. I believe one of the issues you raised in terms of resignations was travel time; is that right, sir?

A. Yes.

Q. And what would you say the total travel time is from any point in the district, 40 minutes or so?

A. It would depend on wrecks.

This morning I tried to get from, I tried to get from my home in south Dekalb to our office, our district office. I went I-20 to 285. I couldn't get off I-20. On a normal day, I could drive to north DeKalb in 20 minutes would be a breeze if there's no wreck, but I can't predict what day or days there will be wrecks on the expressway.

So it could vary from 20 minutes to two hours getting from my house to a north DeKalb school, could vary considerably.

Q. That would be just as true in Gwinnett with a wreck, wouldn't it, sir?

A. Yes. Yes.

Q. You don't do any reassignments of teachers for Singleton purposes, do you?

A. We have not made a practice of forced reassignments to meet the Singleton at this point, no.

Q. And that hasn't happened at least in the last four [33] years of your tenure: is that right, sir?

A. No.

Q. Are you familiar with the court order in this case, sir?

A. Yes.

Q. Do you remember in 1976 there was an order concerning faculty?

A. Yes.

Q. And I would like to read you a couple paragraphs of it and see if it sounds familiar.

"Two reasons were supplied by the associate superintendent for community and staff relations to explain the higher concentration of black teachers in more predominantly black schools. One, teachers living near those schools preferred to teach near their homes. Two, principals desired to have teachers who were the same race as most of the students so students have someone to relate to. Involuntary transfers are rarely used to alter the distribution of teachers in the individual schools."

Sound familiar?

A. Yes.

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TESTIMONY OF ROBERT L. TUCKER

* * * *

[65] THE COURT: I think you said 47 percent, but Exhibit Number 41 shows 41 percent.

BY MS. WILDE:

Q. Terry Mill I have got at 47 percent from the teacher tape.

Now, again, one of the ways you try to deal with that would be as you turn over teachers, right?

A. That's correct.

Q. I show June '86 forward, number of positions filled in that school as 12. That sound familiar?

A. Yes.

Q. And eight of those were white and four were black, and so you have still got a skew, right?

A. That's correct.

Q. So you had 12 teachers turn over, but you still, at the beginning of the '86 school year, you are at 47.

A. (Nods head affirmatively).

Q. Now, this isn't the first year you have had problems with Austin, right?

A. No, it's not.

Q. I show you had 13.8 percent in '85-'86 at Austin. Do you have any reason to disagree with that?

A. No.

MR. SAMS: Can we identify what time period, Your [66] Honor? Are we talking about mid year or beginning of the year or end of year?

MS. WILDE: My stats are from your teacher tapes.

MR. SAMS: What time?

MS. WILDE: This is '85-'86.

MR. SAMS: Do you know what time during the year?

MS. WILDE: They are your tapes. My guess is September.

BY MS. WILDE:

Q. So this is a problem you have had over time, and it's been persisting over time?

A. (Nods head affirmatively)

Q. Right?

A. It's been there, yes.

Q. As a matter of fact, Austin which we just said was, we also had a problem in '85-'86 who was at 13.8, shows June 10th, 1985—again, this is Exhibit 35 which shows your turnover in any year, I show Austin having nine positions filled during that school year.

A. That's correct.

Q. And you still wound up after filling nine positions with a 13.7 percent?

A. Let me elaborate on that, if I may.

That is the year that we closed a school, a nearby school, one of the neighborhood schools, and if you will [67] recall, I said earlier that we placed students where we have space, classroom space.

We had space at Austin, and we made the move of the students and the teachers, and we also moved some minority teachers from the closed school to Austin also, so we—

Q. Well, let's talk about Hightower. Did that have the same situation going on?

A. No.

Q. I show 12.5 percent in '85 which is again substantially below 27, 15 points off, about; is that right?

A. (Nods head affirmatively).

Q. I show you under Exhibit 35 as having eight new positions filled, and you still are only at 15 percent in September '86. Any reason to disagree with that?

A. No.

Q. Same thing at Sky Haven. I take it you didn't have a school closing that you moved anybody into Sky Haven.

A. No, I don't think I did.

Q. I show you in '85 at being off at 39 percent. In '85 filling 13 positions between school years and going up to 40 percent in 1986. Do you have any reason to disagree with that?

A. No. Let me make a statement there if I may.

I would ask you to remember that we have [68] approximately 70 percent from the teacher pool, 79 percent white, 30 percent black, meaning that most of our teachers are white, and 30 and 70, when you try to go 50-50, it creates a little problem.

Also you must remember that teachers are basically distributed north and south by race. Consequently, it's a little more challenging to meet those requirements, because, as I have said, we always make an effort to do that.

Q. Isn't 13 teachers a fair amount of leeway to try to correct a Singleton imbalance?

A. Yes, it is.

Q. And you still—and you wind up increasing by .5 percent despite 13 replacements?

A. (Nods head affirmatively).

Q. Again, Wadsworth. I take it you didn't have any school closing in the area of Wadsworth?

A. No, we didn't.

Q. I show you in '85 as having 41.7 which is again outside even a ten percent, filling seven positions and still being at 40 when you open in September '86. Any reason to disagree with that?

A. I do not disagree with that.

THE COURT: This '86 document I am looking at shows Wadsworth at 70 percent, at 70 percent and 30 percent.

MR. SAMS: Your Honor, if I might explain, I was [69] just told that our teacher tapes are mid year, February and March, and so what you have are figures at the beginning of the year.

What Ms. Wilde is going from are statistics coming from the the middle of the year that takes place mid year, resignations or terminations.

That's the confusion, I believe.

MS. WILDE: Your Honor, we have had terrible problems with trying to match these numbers, and counsel have done their best to try to do that, but I do have a stipulation to the accuracy of the numbers I am using.

THE COURT: He is not challenging that now. He just says it's a different time period.

All right.

What I have, I have no way of knowing what the date of it is. It just says 1986. I don't know whether it's January 1986, school year ending '85-'86, or school year beginning '86-'87. It just has '86 at the top of it.

MS. WILDE: I understand, and that's why I will get you an exhibit by tomorrow morning, Your Honor.

THE COURT: All right.

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TESTIMONY OF MARY DURR

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[156] BY MS. WILDE:

Q. Indeed, there is virtually no white participation in M-to-M; isn't that right?

A. Very few.

Q. Under two percent, right?

A. Well, I'm not certain about that.

Q. Indeed, basically what happens is that the students, the M-to-M students transfer from the majority black schools into those schools which already have some kind of racial balance, the whole middle zone; isn't that right?

A. Well, if you are talking about what happens now, yes, but I would imagine when it started several years ago that was not the case.

Q. For example, lakeside is one of your high M-to-M, and that's 43 percent, right, and Shamrock is also one where you are coming up. You had 302, according to this chart, in 1986; is that right?

A. I'm sure that's correct.

Q. And Henderson is beginning to be a larger M-to-M area. There are 400 in a 28 percent school?

A. I'm sure that's correct. I'm not looking at the figures.

Q. I'm using your exhibit.

A. Okay.

Q. But where you don't have much activity is up north, or [157] you don't have much M-to-M activity at Tucker, Stone Mountain or Stone Mountain II, do you?

A. Well, I believe this past year during open enrollment period was the first time Stone Mountain had been an option for several years, but in terms of the selections that parents make, it's a volunteer program, and parents do that.

Q. I understand that.

Stone Mountain I and II together only have 11 M-to-M students according to this chart.

A. You mean for the next year?

Q. For last year.

A. I can understand that, because neither school was open to accept M-to-M students, so obviously those students were M-to-M in the neighborhood elementary school.

Q. Well, Clarkston had only—

A. Clarkston was not on the list last year.

Q. It had 51 students.

A. Well, we have enrolled 51 for '87-'88, but for last year, I believe Clarkston was not an eligible school. I'm almost certain it was not.

Q. I'm dealing from your list.

THE COURT: When you say it was not eligible, do you mean because of—

THE WITNESS: Because of the capacities.

THE COURT: Pupil-teacher ratios?

[158] THE WITNESS: No. The building capacities.

THE COURT: The building capacities.

THE WITNESS: So the 51 that you are referring to I believe is what happened during open enrollment period of this past year for the '87-'88 school year. That's the 51 that's showing there.

BY MS. WILDE:

Q. Among your most popular M-to-M schools were Druid Hills and Briarcliff, right?

I have 478 students in Druid Hills under your 1985 figures. Does that sound about right?

A. It does.

Q. Out of 938, so half your population is M-to-M, right?

A. That is probably true.

Q. And, again, Briarcliff, you had 336 M-to-M in '85 out og 576 students, so Briarcliff you have got more than half M-to-M.

A. I'm sure that happened, because perhaps the indigenous population decreased.

Q. But they are very popular M-to-M schools in that middle region?

A. Yes, they are. And, of course—yes.

Q. And they have just been combined, haven't they?

A. Briarcliff and Druid Hills, yes.

Q. There's no M-to-M available seats for next year?

[159] A. At Druid Hills?

Q. (Nods head affirmatively).

A. When you are speaking of next year, you are talking about '87-'88?

Q. I believe the system stipulated that there is no M-to-M seats available.

A. Right. Because we moved the regional special programs to Druid Hills. There were no seats available.

MR. SAMS: Your Honor, let me correct a stipulation. The stipulation is no M-to-M seats available, but the reason is because it's a 50-50 school. You can't have M-to-M regardless of the capacity of the school. Druid Hills and Briarcliff are cut off because they are 50-50.

THE COURT: The stipulation was that it is not an eligible M-to-M school?

MR. SAMS: That's correct. Your Honor.

THE COURT: All right, sir.

BY MS. WILDE:

Q. Had there not been a combination, it looks to me as though you have 44 percent black at Druid Hills; is that right?

A. I'm sure that's correct.

Q. So you still would have had some M-to-M capacity there but for that combination?

A. I don't know, because, again, it depends on the special [160] limitations, so I'm not looking at the figures.

Q. If you are going to consolidate a school, I can't imagine you have got special limitation, can you?

A. To a certain extent, yes.

Q. You don't—never mind.

The system relies on M-to-M as its major desegregative vehicle; isn't that right?

A. That's one of the major tools, yes.

Q. Are you familiar with the 1980 report to the court by the Bi-racial Committee which said, and I quote, the majority to minority program is not and cannot be thought of as the vehicle for desegregating DeKalb

schools and therefore continue to urge the school administration and Board of Education to seek other viable alternatives to desegregation of DeKalb County schools?

A. No. I'm not familiar with that report.

Q. So you were not the liaison to the Bi-racial Committee—

A. No, not at that time.

Q. As a matter of fact, you have only became a liaison in the last year?

A. No. This happened in '84.

Q. I believe—I thought you had testified it was '86 that you assumed your current position.

A. As Assistant Superintendent for Administration, but as [161] liaison for the Bi-racial Committee, that was '83-'84, I believe.

Q. Okay.

THE COURT: You still are the liaison for that?

THE WITNESS: Yes.

BY MS. WILDE:

Q. Don't you think it's inappropriate to have the entire burden of selecting a desegregated education being placed on parents to decide to M-to-M their children?

A. The intent of the program is to provide an integrated school experience for all students, and every decision I make is to keep or to promote the goals of the M-to-M program.

Q. Isn't it fair to say though that basically for all the kids in the southwest area of the county they have two choices, a segregated education or getting on an M-to-M bus?

A. I guess you could say that.

Q. Are you aware of adjustment problems under the M-to-M program?

A. Well, are you talking about specific problems in terms—

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TESTIMONY OF WAYNE COWEN HUEY

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[144] BY MR. HUEY:

If a parent said, "I want to go because I want my child to have an integrated experience," that's fine. We never questioned in the sense of, "you should not do this. You should not go M-to-M."

It was just a matter of us trying get information. We wanted the students to stay at Gordon High School because we felt we had a good school at Gordon and a lot to offer, and frankly we hated to see a lot of the students with parents who were very concerned taking their children elsewhere.

BY MS. WILDE: You just answered the next two or three of my questions. That was my concern as well.

I take it the rumor that Gordon is not one of the best high schools in the system has been around for a long time.

A. I think that rumor started probably in the late sixties when Gordon was the first school to go through the transition. Unfortunately, there was a lot of negative publicity, and I was at Walker at the time.

When I was assigned to Gordon as a counselor, there was some negative reaction to that. * * *

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TESTIMONY OF RUEL MORRISON

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[199] BY MR. MORRISON: Yes, we do have remedial reading teachers in every school.

BY MS. WILDE:

That's one per school?

A. One per school.

Q. And then you have additional tutors that you use in some of the schools; is that right?

A. We do at the present time. I believe we have 36 tutors, and I believe we have got 52 remedial reading teachers who are working with a particular program that I think you are addressing.

Q. Isn't it fair to say that those teachers should be distributed on the basis of need of students, if they are remedial teachers?

A. We are in the process of doing that. We have some schools now that have more than one assigned.

Dr. Tartt has been moving in this direction for the last two years. I would concur that where the need is certainly we should provide in reading that resource until we address that need.

Q. Indeed, in 1986, according to the statistics I was given, and feel free to disagree if you think you have got other information, you have 20 percent of your students in Oak Grove where your average C.A.T. was 150 getting reading help.

Whereas, down at Stone View where you had only an [200] 89 average score, you have got 18 percent.

Doesn't that sound like a maldistribution of remedial resources to you, sir?

A. No. I think that we needed to meet the needs of those youngsters at Oak Grove, because indeed there were students there who were in need of help.

I do think that some additional flexibility is already being explored and put into effect by Dr. Tartt at the present time, as I mentioned a few moments ago, to see that those schools that have—at the present time—again, I think we need to look at temporary deficits when we are talking about a need in a given school. Temporary deficits will be addressed will be corrected and will move on.

Q. I take it the difference between 89 on a C.A.T. and 150 is a fairly substantial difference.

A. Yes.

Q. And you would thing that 20 percent of the students in a school whose average is 150 need remedial reading services, sir?

A. Well, again, we are challenging maximum potential of students. We don't want to just stop where, you know, if a student on the national average or slightly above. That particular student, instead of reaching 7.8, as you mentioned a few minutes ago, might be capable of reaching [201] through extrapolation the twelfth grade, 12.1 or 12.2.

Certainly we need the services of a reading specialist to see that everyone is challenged to the maximum. We don't want to have a minimum. We also want to challenge students at both ends of the spectrum.

Q. Then you are not doing a program on the basis of needs?

A. Well, we are doing the program on the basis of need, but we are meeting the needs of all youngsters in accordance with their particular potential.

Q. So it's not a remedial program to bring up the kids with low scores; you are trying to get everybody up to potential. Is that what you are telling me?

A. We are doing both. Again, the remedial reading teacher at Oak Grove, as you said, will have fewer youngsters to work with obviously, but her responsibility again is to see that the top is also reached for those other youngsters.

Q. Montgomery Elementary had an average C.A.T. score of 133. You had a full third of their student body in remedial reading?

A. You are getting into areas that Dr. Tartt can more properly address than I. I don't know those specific figures.

Q. Do you have any reason to dispute that figure?

A. I would want Dr. Tartt to address that. I would not accept it without her saying yes or no.

[202] Q. Posit for a moment that I have got the right figure. Doesn't that seem a bit out of whack to you when

you have only got 18 percent of the students who are scoring 89?

A. Again, if what you are saying hypothetically—

Q. Yes.

A. —is correct, I would say that I would agree.

Q. The same would be true if you have 25 percent of your students in a school where the average is 138. Doesn't that present the same kind of problem?

A. I will have to hold and say that I would want Dr. Tartt to respond to that. She's in the trenches with that program daily, and I am not.

MS. WILDE: One moment, Your Honor.

That's all I have, Your Honor.

THE COURT: Do you have anything further?

MR. WEATHERLY: No further questions, Your Honor.

THE COURT: You may step down.

Call your next witness.

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TESTIMONY OF ERNEST LAMAR HALLFORD

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[217] THE COURT: But they didn't have the lesson plan for the previous week or the following week either one.

MS. WILDE: Well, it says "lesson plan attached, excellent lesson plan." I'm reading Stone Mountain Biology General, Your Honor.

THE COURT: That is the one I am reading. Says "current lesson plan and following week plan not available."

MS. WILDE: Right, but the lesson plan they had was given to students and given day by day expectations.

THE COURT: For the previous week.

MS. WILDE: Yes. That was the one that was in the classroom when there was no announcement.

THE COURT: Okay.

BY MS. WILDE:

Q. I would presume the reason we are having all this conversation about advanced level courses is because indeed there are more advanced level courses being taught in the white schools than in the black schools; isn't that right?

A. There are more students taking advanced courses. That doesn't necessarily mean—of course, it could mean that, but it does not necessarily mean that more courses are being taught.

Q. So it's more students for sure, maybe more courses, and certainly at the advanced placement level more courses being offered in the white schools?

[218] A. That generally would be true.

MS. WILDE: That's all I have, Your Honor.

THE COURT: You may step down.

MR. WEATHERLY: May I have one quick question, Your Honor?

THE COURT: Okay.

MR. WEATHERLY: Excuse me, Your Honor.

REDIRECT EXAMINATION

BY MR. WEATHERLY:

Q. You mentioned that the activities bus was being used for a tutorial program. What schools were involved in that?

A. That was Walker High School and Gordon High School.

MR. WEATHERLY: Thank you.

No further questions.

MR. SAMS: I would like to call Barbara Dover, Your Honor.

THE COURT: All right.

THE CLERK: Ms. Dover, raise your right hand, please.

You do solemnly swear the testimony you are about to give shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Be seated and state your full name for the record.

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TESTIMONY OF VIVIAN McMILLAN

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[10] BY MS. WILDE: Okay. I think that's all I have got on that chart. Let's try switching to another one.

I'm heading for 115-A.

I'm pretty sure that's it.

Again, what we are dealing with is students who are coming into DeKalb versus those who have had their total education. Is that essentially what we are talking about on that chart?

A. Yes.

Q. So, again, what we are looking at is mobility figures, and we are getting fairly low numbers of students coming in at each of those grade levels, right?

A. Yes.

Q. As a matter of fact, grade two—I am reading your chart. I have got 270 black students and 444 white, so we are well under a thousand there.

A. Yes.

Q. Similar kinds of patterns throughout.

Again, what we have got is a fairly serious gap, looks like to me, between blacks and whites either at the beginning or after their time in DeKalb. Would you agree?

A. Yes.

Q. Have you done any plotting of the differences of what [11] that graph is showing in terms of not just looking at the bars but trying to figure out what those bars are telling you about how blacks and whites are doing comparatively in DeKalb?

A. Plotting in the sense of what?

Q. Well, plotting in terms of taking the gain each year for blacks and comparing it to the gain each year for whites.

A. I believe that there were some exhibits where we did look at gains.

Q. No, but in terms of doing any graph plotting to see how it looks when you look at that, not just visually on the graph.

A. No.

Q. Let me show you a real rough sketch and tell me whether it indeed seems to be correct. You can compare it to what you have got on the chart.

MS. WILDE: I apologize. That's the only copy. I will show it to you before she testifies.

THE WITNESS: I'm not sure what I have here. This is differences in N.C.E.'s converted to percentiles?

MS. WILDE: Yes, and you have got percentiles here.

THE WITNESS: That's correct.

MS. WILDE: So what I'm showing is the [12] differences—

THE WITNESS: Oh, these are—

MS. WILDE: No. One's black and one's white.

The whites are the red line. The blacks are the pencil line, and all we are doing this, and I would like you to check the accuracy, is to look at the difference in each grade level where the blacks are and where the whites are in terms of the gains that are being shown.

MR. WEATHERLY: I would like to see.

MS. WILDE: Absolutely.

MR. WEATHERLY: Could we maybe put something on the board so we could have some clue as to what we are doing?

MS. WILDE: I can try.

Do you have an eraser, Your Honor?

THE COURT: Mr. Evans, do you have an eraser for this chalk board over here?

Okay.

MS. WILDE: I should have been a teacher. I am not good at audiovisuals.

BY MS. WILDE:

Q. Okay. We have got over here the percentiles. We are talking about the differences in these percentiles taking them from your chart, Okay?

A. Uh-huh.

[13] Q. Let's see. Five, ten.

The second grade, third grade, fourth grade, fifth, sixth and seventh.

Okay. In grade two I think you are showing the whites with a little bit more than five percent, five percentiles gain?

A. Now, this graph does not at all represent gains.

Q. My apologies. In terms of where they are?

A. Okay. Difference.

Q. Differences?

A. I would call it difference.

Q. My apologies. As I said, I'm not a statistician.

A. Neither am I.

Q. The difference between students who are new and the students who are old is about five points, right?

A. On second grade?

Q. On second grade for whites. And it's about, what, two for blacks?

A. That's right.

Q. Okay. So I will put blacks down at two and whites at about five.

Third grade, we have got blacks a little bit over five; is that right?

A. (Nods head affirmatively).

Q. Yes?

[14] You have to answer audibly. I have my back to you, and the court reporter needs to hear.

A. Yes.

Q. We have got whites up at about 13; is that right?

A. Yes.

Q. Okay. Fourth grade, we have got blacks up near nine; is that right?

A. Yes.

Q. And whites are again a little bit over 13, between 13 and 14?

A. Yes.

Q. And fifth grade, blacks are down in the three to four range?

A. Correct.

Q. And whites are between 12 and 13, basically somewhere in there?

A. Yes.

Q. And sixth grade, blacks are about five; is that right?

A. Yes.

Q. And whites are at about 12, somewhere in there?

A. Yes.

Q. And seventh grade, blacks go up to about eight or nine?

A. Yes.

Q. And whites go up to 20?

A. Yes.

[15] Q. Okay. I will connect the dots.

THE COURT: Let me ask you there, Doctor. You have got blacks and whites, and you have first year and then you have total?

THE WITNESS: Yes, sir.

THE COURT: When you say "total," you mean the total population, not the remaining population?

THE WITNESS: No, sir. I mean—by total I mean that those children have received all of their education from first grade in DeKalb County. They have received their total education in the school system compared with students—

THE COURT: Okay.

THE WITNESS: —who have entered this year.

THE COURT: It's not total population. It's total of those who have been there the entire time.

THE WITNESS: Yes, sir.
THE COURT: All right.

BY MR. WILDE:

Q. So that's a graph essentially we have got?
A. Yes.
Q. And indeed it shows whites not only being above but generally staying above and doing, increasing—doing much better in some of these gaps, so these lines—whites remain ahead, and the differences that they are ahead go up?
[16] A. That is correct.
Q. That is all I have got on that one.
I just saw that Steve had given me the numbers. It would have helped. Okay.
Moving to 117-A. I think that's it.
That's the one that looks at free and reduced lunch with and without for both races, right?
A. Yes.
Q. Basically doesn't that chart show that regardless of S.E.S., the levels—regardless of S.E.S., the whites invariably do better?
A. The whites have higher scores than the blacks, yes.
Q. And I though that's what you were trying to measure on some of these tests, right?
A. Yes.
Q. That's all I have got on that.
One ten.
MS. WILDE: Your Honor, I believe that's 110-A.
THE COURT: I have it.

BY MS. WILDE:

Q. Whose idea was it to do this chart?
A. I believe it was our attorneys'.
Q. Don't you find that chart somewhat offensive in terms of what it's purporting to do and the levels of classifications?

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TESTIMONY OF FANNIE H. TARTT

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[173] BY MS. WILDE:

Q. That's I believe what this figure is in the upper right-hand corner. You have got six cut off. That's what the original says.
A. Yes.
Q. So this is something I can work from for questioning you?
A. Yes. That's from a year ago.
Q. Montgomery Elementary is majority white, isn't it?
A. Yes, it is.
Q. And I show an average C.A.T. score of 133. Do you have any reason to disagree with that?
A. An average C.A.T. score? What score are you using?
Q. C.A.T. '84. That's the only one I was given in discovery.
A. What score? A scale score, N.C.E., a grade equivalent, what?
MS. WILDE: Do you know?

(pause)

MS. WILDE: An N.C.E.
THE WITNESS: I beg your pardon?
MS. WILDE: An N.C.E.
THE WITNESS: Oh, an N.C.E. of 134?
MS. WILDE: One thirty-three.
THE WITNESS: One thirty-three? I'm not familiar [174] with that since N.C.E. scores stop at 99.
MS. WILDE: These run from 82 to 152.
THE WITNESS: Is that just the reading score?
MS. WILDE: No. No. That's the C.A.T. 84. That's both.
THE WITNESS: For reading?
MS. WILDE: Reading and math.
THE WITNESS: They are added together?

MS. WILDE: Right.
THE WITNESS: Okay.

BY MS. WILDE:

Q. Okay? Do you have any reason—can you provide any reason why a third of the students in the elementary school, Montgomery Elementary, who received reading services would have gotten services when the whole school's average was 133?

A. Yes. The students who were in need of services would have received those services.

A mean score would just mean that you had a large number of students who scored very high, but if you have students who are remedial, regardless of the score, we have to meet their needs.

Q. Indeed, isn't it true that in some schools you don't have to be as far behind in order to get remedial services as in other schools? At least, wasn't that the case at the [175] time this computer run was done in '86?

A. In 1986 when the computer run was done, yes, that was the case, that you did not have to be as far behind to be eligible for some type of service.

Q. So that may explain, for example, why Nancy Creek has 25 percent of its students served, and it's got an average score of 138?

A. No. It would mean that at Nancy Creek those students were in need of services, that they met the state guidelines.

Q. But they may not have been as far behind as those students at Stoneview who were scoring 89 on average, right?

A. Yes. The state set the guidelines at a half year or more below grade level or below the 25th percentile, so if you are a half year below grade level, you are eligible. If you are two years below grade level, you are still eligible.

Q. Wouldn't you expect a greater percentage of kids to need the services in a place like Stoneview where you have got an 89 average C.A.T.?

A. Certainly would.

Q. Same at Canby Lane which has got a 96 average C.A.T.?

A. Yes.

Q. Those are both majority black schools, are they not?

A. Yes.

Q. Yet I show the percentage of students served in each of [176] those is 18 percent under your program.

A. That was 1986. You will find during the past year every single student was served. That was one of our goals.

MS. WILDE: I believe that's all.

BY MS. WILDE:

Q. Are any of the state remedial funds being used for enrichment in advanced reading courses?

A. No. The state does not allow that. They monitor the program very heavily. All of it is local.

Q. Are the local funds that are part of that 75 percent being used—

A. No. That is strictly remedial.

Q. That's a separate bank of money?

A. Yes.

Q. Were those percentages the same last year, before this whole thing changed?

A. Yes.

Q. Do you ever wind up having students placed in those courses, remedial courses, on parent or teacher recommendation separate from the state guidelines?

A. Not into the state program, but into the local program a parent can request it, and we will service the student.

Q. And that's the remedial?

A. No. That is the locally funded part of the program.

Q. But that's locally—

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TESTIMONY OF DR. BILL STRAIN

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[175] BY MR. SAMS: And can you tell us where portables are presently being utilized?

A. Yes, I can.

Mobile units presently are placed—there are four mobile units at Avondale Elementary School, one at Cedar Grove Elementary School, four at Dresden Elementary, one at Fairington, one at Glenhaven, three at Main Street, seven at Rainbow, 17 at Redan Elementary, one at Rock Chapel, two at Rockbridge Elementary, two at Stone Mountain Elementary, four at Stoneview Elementary, and three at Woodbridge Elementary.

Q. On a global basis, can you determine the racial make-up of the students who use these more than other students?

A. At the present time, if we consider 65 percent, anything beyond 65 percent is a school that is predominantly black or predominantly white. We have 13 units in school who would be predominantly black, that is, they exceed 65 percent, 13 units, 28 units in schools that are predominantly white, with a population of 65 percent or more, and we have nine mobile units in schools that lie in a balanced range between the 35 and 65.

* * * *

[207] BY MS. WILDE:

Q. Indeed, isn't the way you make decisions in the planning department on whether or not something is going to have a racial impact on whether or not it is going to make the racial balance worse, isn't that the way you take a look at things?

A. Yes.

Q. So, if you are combining 99 and a hundred, then the position of the planning department will be that that

is race neutral and that's all you have been asked to assess, is that right?

A. Well, it's not—I'm not sure it's that simple. Say again what you are saying.

Q. Well, if you—I take it what you are looking at is whether or not it is going to have a harmful effect versus race neutral, and what you are saying is, if you are combining 99 and a hundred, you are not making things worse, therefore, there's no problem with moving ahead with that kind of plan on your desegregation considerations?

A. Correct.

Q. In fact, that's indeed, the same way you have made assessments in the planning department for quite awhile, isn't that right?

The way you analyze things is whether or not they are going to affirmatively make the numbers worse?

[208] A. No, no, that's not correct.

The first thing we look at is whether there is something we can do to enhance integration. Of course, the flipside of that is: does it make it worse. But the positive side that you look at is: is there something we can do to enhance the integration, utilizing the neighborhood school concept.

Q. With the primary piece being the neighborhood school concept?

A. I am sorry?

Q. Within the confines of the neighborhood school concept?

A. Yes.

Q. Have you ever proposed a change in attendance lines as a way to affirmatively reinforce school desegregation?

A. Outside an overcrowded situation?

Q. Well, tell me what you mean—why don't you try answering the question and then explaining how you make your decision?

A. I will qualify my answer.

When a school is overcrowed, the first thing we look for is a way to enhance integration.

* * * *

[212] BY MS. WILDE:

Q. Three expansions or one new school?

A. Each year? No.

Q. You are saying you are aware of at least three expansions and three new schools?

A. Yes.

Q. So, basically the trend that we have seen in the last ten years continues, that you are closing schools in the north and building and adding to schools in the South?

A. I would agree with half of that.

Q. Well, what you are saying is you are not sure yet how many you are going to close in the North?

A. That's correct, or if we will close any.

Q. I believe you testified at your deposition that the only thing that has been explored to deal with the 99 percent black schools during your tenure has been the M-to-M program; isn't that right?

A. The only thing I have worked with is the M-to-M program, but, if I didn't expand that to include the Magnet programs, I should have.

Q. There has been no other attempt to reduce the extreme racial identifiability of those schools, right?

A. My statement was incomplete if that's all I said. I should have added the magnet program to that.

Q. So, M-to-M and magnet?

A. Yes.

[213] Q. And, indeed, didn't you say you haven't even participated in any discussions about anything other than those two?

A. You have the advantage, because I am not looking at my deposition.

Q. I'll be happy to show it to you and read you sections of it.

A. Would you, please?

MS. WILDE: 123.

BY MS. WILDE:

Q. "Has there been any discussion or any concern about, in terms of the meetings that you have had during the course of your ten years as associate superintendent, any concern about 90 and 99 percent black schools and 90 and 99 percent white schools in the system?"

And then you go through M-to-M. "In the particularly area that I work, which is M-to-M, we do everything we can, present M-to-M transfers in such a way, such a light as to make all students know in a most confident way that it is available for those who wish to take advantage of it, I have racial experience and that involvement in it."

It goes to: "M-to-M has had some success to some degree, but with respect to schools like Gordon or Walker where they have been over 99—90 percent over ten years, black and white over 90 percent white since they have been built, has there been any discussion about or concern or [214] proposals in order to provide more racial integration or balance between those stools?"

And you say: "Let me understand. You are not asking me for my opinion. You are asking have there been any formal meetings to do this?"

"Yes, I'm not asking you for your opinion now."

"No, I have not been to any formal meetings for this purpose."

"Well, have there been any informal meetings?"

"Not that I have been involved in."

A. Yes. And I think the earlier statement and the statement you just made, the area in which I work, which is school administration, and the M-to-M program, my focal point has been toward the M-to-M program.

If I might amplyify that, there are those who work in other areas that have been involved in magnet schools which is intended to do this. So, personally that answer is correct.

Q. But anything that would require a shifting attendance zones or doing reorganizations of junior senior high schools, all that would come through your departments?

A. If there were attendance lines changes, yes.

Q. Isn't it fair to say, Doctor Strain, that the system's attitude toward the racial composition in schools such as Gordon and Walker and even Peachtree, the extreme racial composition of the schools has been essentially "it's not our [215] fault; therefore, it is essentially not our problem?"

A. I don't think that's a correct characterization.

I think—I don't think you can look at anything and say, "you did that to cause it to be that way." So, yes, I think that's correct. But I wouldn't accept that we are not concerned or haven't done anything because of the time, the energy, the money, the expense that is devoted to—the only part of that that I work with is the M-to-M program. We do everything we can to make the M-to-M program work, to increase the M-to-M program.

Q. The M-to-M program is specifically spelled out in the court order, is it not?

A. Correct.

Q. And there was also an affirmative duty to desegregate—

A. Yes.

Q. —spelled out in the 1969 orders?

A. Yes.

Q. And you have read that order have you not?

A. Yes.

MS. WILDE: I have no further questions.

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TESTIMONY OF DR. ROBERT FREEMAN

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[61] BY MR. SAMS:

Q. After hearing from Representative Evans, what did you do?

A. I consulted with my attorneys and school board, and we—Your Honor may recall, we had a meeting in the judge's chambers, at which the judge was asking how we were getting along and what kinds of problems we were having.

Several topics came up, and the judge pointed out to us that he could not and would not rule on situations that might come to his attention in his court but that we should go out and work together to attempt to build a better school district and get along with one another.

As a result of those discussions, I relaxed my consideration for the number of black teachers that I would consider to be appropriate in the black schools, because the black teachers in a majority black school up to 30, 35, 40 percent, it was my consideration at that time that they did serve. It was employment justice. I was trying to elevate the numbers of black teachers, and they served well as role models for the students, and I did not receive any criticism from the Bi-racial Committee, from the federal government or from Plaintiff until this hearing or until our application for unitary status was filed.

[62] Q. So we make sure the record is clear, the action you took was to increase or decrease the number of black teachers in majority black schools?

A. No direct action was taken. I was more tolerant as it commenced drifting in that direction.

THE COURT: When you say drifting in that direction, you were more tolerant to accept more deviation from your goals?

THE WITNESS: Our goals were, of course, at that point probably 25 percent, 26 as it changed, but it didn't bother me if we were a couple over.

It did and does bother me more to be a couple under. I think that represents a more serious problem for us now, because while our goal is 30 percent today, the goal has to be increased.

BY MR. SAMS:

Q. But we are talking about now not the goal of overall representation but the number of minority teachers teaching in majority black schools?

A. Right. I'm saying that the overall goal has to be increased, and so when the overall goal is increased we are going to have to have more teachers, but my goal is right on the Singleton.

I think we achieved the Singleton some time back, but I think it is an excellent guide.

* * * *

[75] THE COURT: And the school system population is running about 47, is it?

THE WITNESS: That's accurate, sir.

THE COURT: Over 50 percent in the elementary schools?

THE WITNESS: Yes.

And add the other non-white would go over 50 percent I think.

BY MR. SAMS:

Q. The A.R.C. figure was white and non-white?

A. White and non-white, yes. I believe that's the only way they give that figure, Counselor.

Q. Dr. Freeman, we were moving to the magnet school programs. What is the school system's position as to magnet schools?

A. The school system is interested in developing magnet programs that are educationally sound, that are racially controlled and that will survive.

Q. What preparations did you or your staff undertake to establish a magnet school program?

A. Approximately four years ago, we started attempting to generate interest in the community for magnet schools and to also collect information as to what the community would be [76] willing or able to support.

We visited a number of the school districts during the period of time from four years back until—well, within a year or so.

I or my staff visited Milwaukee, Wisconsin; Cincinatti, Ohio; San Diego, California; San Antonio, Texas; Dallas, Texas; Buffalo, New York; Indianapolis, Indiana, and I think other schools and then made many phone calls and exchanged some correspondence.

We also, after admonishment from this court to proceed to get some magnet programs in operation, then we struggling with the exact way to do it, finally decided to go to a community survey handled by some professionals.

Now, every place we went, this was one of the things that they would point out to us, that you better find out what your county, your community will buy, will became involved, because once you put it in, it's very difficult to get it out. You get some vested interest, some empire building, and you may, whether it's a program that's very good or not, have a lot of trouble getting it out, and it might appear that you are trying to be reactionary in your approach to the magnet program.

So we did get Dr. Armor and Dr. Clark whom you have heard testimony in the past few days to design for us and execute an instrument which surveyed the community to find out some of the things the community thought they could support in the magnet program.

* * * *

[131] BY MR. FREEMAN:

Then we have periodic meetings all during the year for these beginning teachers.

In addition to that, many of these teachers continue to go to school during that first year because they are

seeking their Master's degree. Others will take the staff development programs that we offer to them.

BY MS. WILDE:

Q. So there are ways that the system can try to deal with the white teachers who are coming into a different cultural school?

A. Yes, and it would be in the reverse, too. You know, the black teachers have a problem also first year in a new setting, but that doesn't take long to reconcile itself in my opinion.

Q. I believe you would agree that there's still a large number of children who are attending what we might call racially identifiable schools.

A. Yes.

Q. And a primary instrumnt for desegregation right now is M-to-M; is that right?

A. That's correct.

Q. We discussed in deposition, as I recall, the kinds of problems facing a black youngster who enters the M-to-M program. Do you remember our talking about that?

A. I don't remember the question, but I'm sure I will when [132] you remind me.

Q. And as I recall, you said it's a difficult, very traumatic experience.

A. For a youngster at age five to go off to school, yes, indeed, it is.

Q. For a youngster at any point to enter the M-to-M program to go into a school that is very racially different than their home school?

A. Well, I was talking about going off to another school regardless of whether it would be M-to-M'ing or just going to another school.

You do add another component, of course, when you send a youngster into a school in which he will be culturally in the minority.

Q. And I think you also talked about the fact that it's hard sometimes dealing with white youngster who may not be as anxious to see them as the youngsters in their home school?

A. That's right.

Q. And I think you call it the problems of, I think, quote, a pioneer period in evolution, in the evolution of the program on the way to achieving?

A. I think it's the evolution of our culture in general. Whereas, in our culture today—I can't believe what has happened in the last 30 years in terms of racial tolerance [133] and in terms of mutual understanding and friendships and the kinds of development that has occurred because of some great people working very hard to make it occur.

But I think we are pioneers. I think we are one of the few cultures in the world that has succeeded to the degree we have succeeded, and all of us have a lot of hopes it will be even more significant in the future.

I think that's a good way to describe it, social pioneers.

Q. So at least at this point there are indeed some problems that black M-to-M students face going into that program?

A. I think there are—I wouldn't say the problems are any more or less than what any other children would be making that same kind of a move.

Q. But indeed it is the black children who are M-to-M'ing and not the whites?

A. Correct.

Q. I believe you had said that there's more that can be done beyond just M-to-M to try to create some desegregation in DeKalb County?

A. Yes.

Q. For instance, magnet schools, right?

A. That is one example.

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TESTIMONY OF ROBERT FREEMAN

[154] BY MR. FREEMAN: I hope you don't have some information I don't have, Counselor.

BY MS. WILDE:

Q. I have no information. I'm just trying to point out that a lot of the projections we are hearing are indeed still projections at this point, and nothing has been approved, and there's nothing that, other than a few pieces, that's yet in place.

A. I hope this doesn't sound too immodest, but you did ask the question. I would like for you to look at the projections I made in 1980 and see how many of them are here.

Q. And you have been around since 1980.

A. Yes.

Q. We had started on one area before that, and I don't think I had finished. A few other questions. I know we have been jumping around.

I think you had agreed that there is more that can be done in a number of areas within the system.

A. I do agree with that.

Q. And that's true whether we are talking about teacher turnover or whether we are talking about maintaining a racial balance in the teacher course or whether we are talking about developing new remedial programs, there's more that can be done?

A. Or student achievement or affective treatment. I do [155] believe that.

Q. And you have begun a number of programs such as the ones which just started in the last year or so at Gordon and Walker; is that right?

A. Yes. We don't have very many programs that we could call a one year history. A good program is probably in planning for a couple of years. You have got to establish some base for support. You have got to sell the ownership of the program to the people that are

going to make it work. You have got to identify and select the people that are going to run it and staff development.

So some programs might be two and three years in the development before you can actually see the realization of them.

For example, I have heard it said, and I believe that this is a bit of an exaggeration, but I have heard it said that if you want a new high school, that from the time it's a twinkle in someone's eye until you open the doors is five years.

MS. WILDE: One moment, Your Honor.

BY MS. WILDE:

Q. We had another question on Hooper Alexander. It showed net capacity at 624, and I believe those calculations are done after you have taken out all the special use rooms. Aren't those the way—

[156] A. One special use room there that is not included in that incidentally, and it is the writing to read project. That is not considered as a special use room, I believe.

So that would be one more room, but even though you have got, let's say 80 or 90 seats there, that wouldn't necessarily mean that you had four classrooms or three classrooms. Now, it might. I just haven't seen that.

I am glad to learn that, as a matter of fact, because that would be an ideal site.

You do need to be careful that you do not go into a school and prevent the community from having something like the writing to read project for the magnet or you would poison the magnet I think.

Q. I think you would agree with me that DeKalb's an innovative district, would you not?

A. I think it is.

Q. And so indeed in all of the areas we have talked about there is more that can be done?

A. Yes.

MS. WILDE: That's all I have, Your Honor.
THE COURT: Mr. Sams?
MR. SAMS: No further questions, Your Honor.
THE COURT: You may step down.

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TESTIMONY OF PHIL McGREGOR

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[4] BY MS. WILDE:

Q. And what's your current occupation?

A. I'm a financial specialist with Travelers Insurance Company.

Q. Do you have any children?

A. I have two boys; Brian, ten, Shawn, six.

Q. And what schools do they attend?

A. They attend Columbia Elementary School in DeKalb.

Q. Have you ever taught school in DeKalb County?

A. I taught at Columbia High School for three years when I first came to DeKalb.

Q. Did you have any further contact with the DeKalb schools after you left the school system as a teacher?

A. Yes. I continued to be involved with the school system as a community activist with a number of organizations that addressed some of the problems of the school system.

Q. And what was your concern?

A. I recognized from almost the moment that I arrived in DeKalb County that we had a very good school system. As a potential parent, though I was not a parent at that time, and also as a classroom teacher, I was concerned, however, that many of the black students were not beneficiaries of that very good educational program, and that concerned me.

Q. Is that still a concern of yours, Mr. McGregor?

A. Yes, it is.

[5] Q. What committees or task forces in the area of education have you served on other than specifically in DeKalb County?

A. In 1977 I was appointed by the then Governor George Busby to serve on an educational task force made up of 26 members state wide composed of school board members, school superintendents, classroom teachers, members of the business community.

I was also asked to serve on and did serve on a state wide legislative committee to investigate and look at the possibility of implementation of middle schools throughout the state.

Q. Can you tell us what direct involvement you have had on on the question of education for black children within the DeKalb County schools? Any participation in this case or other aspects of that question?

A. Well, I have served and was appointed by the court to serve on the Bi-racial Committee that is still in existence today. I served for, I believe, five years, and served as its chairman for one year.

Q. When would that have been?

A. I can't recall the exact year that I served as chair, but the committee I believe was established in either '76 or '77. I can't recall the exact year now.

Q. And you are now a member of the school board, are you not?

[6] A. I have been a member of the school board now for four and a half years. I'm in my first year of my second elected four year term.

Q. So you are both a plaintiff and a defendant in this case, are you not?

A. I read in the newspaper that I am.

Q. What is the current racial composition of the board?

A. I'm the only black board member.

Q. Do you expect that to change?

A. Well, I would hope that it would change. I don't know that it will change, because, based on the last

figures that I have seen, the districts—as you probably know, we have five school board districts and two at large posts. My district is the only one that has a majority black registered voters. The others are majority white.

It's been my experience that until and unless a district has at least 50 percent or 50 plus percent registered black voters it is very difficult to have a black elected, so the only other district that has I think a significant black registered voter population would be district five.

Q. How about the city wide post?

A. Well—

Q. County wide. My apologies.

A. County wide. I don't know what the exact county wide [7] registered black-white voter percentages are, but there has been candidates in the past, at least one black candidate, to run on a county wide basis, was not elected. In fact, I think he ran twice.

THE COURT: Mr. McGregor, when we say county wide basis, we really mean county wide excluding the city of Atlanta and Decatur, do you not?

THE WITNESS: Yes, sir.

THE COURT: All right.

BY MS. WILDE:

Q. So if you had to project within the next three to five years what the composition of the board would be, what would be your best guess?

A. Well, unless there's a resignation on the board in the next three years it will remain as is in my prediction racially, because the three districts that are up for re-election next year are overwhelmingly white districts in terms of the registered voters.

In five years, again, I would hope that there would be another black elected to the board, but I don't know what those chances are.

That would be just a guess, prediction.

Q. What was the vote on the board on the motion for unitary status?

A. My vote was the only dissenting vote among the seven.

[8] Q. Why did you vote against unitary status, sir?

A. Well, I did not believe and do not believe that the school system, while we have made progress, there have been things that we have done, I don't believe that we have accomplished the goals of a unitary system in total.

I think that there are some areas that yet remain to be addressed and to meet the mandates of a unitary system.

Q. It might be easier to talk about that if we go through some specific areas.

What problems, for example, if any, do you see in the area of the black-white teacher ratio within the school, for example, what's called the Singleton requirement?

A. Well, that's been, in my mind at least, the problem for a number of years. As I understand the Singleton Principle, the requirement is that the black-white teacher ratio at each school should approximate the black-white teacher ratio throughout the school district with some flexibility, realizing it's not possible to always have exact percentages.

I have found that, and I think the statistics and the facts will show, that there are some schools where there is an under representation of minorities on the staff and have traditionally been so, and these have been majority white schools, student population wise.

[9] While at the same time there are some schools that are majority black schools where there has been an over representation in terms of the Singleton Principle, giving a five or ten percent flexibility one way or another, above or below. There are some schools that are, in the black community that have exceeded that ten percent above.

Q. Have you discussed this problem with the superintendent and members of the board?

A. It has been discussed, and, yes, I have. Not only have I but members of the black community have made

points of this with the superintendent and with the board, and with personnel I have discussed it.

Q. And what's been the response?

A. Well, the responses have been varied.

Recently, and when I say recently, the last couple of years or so, the response has been and the concern has been that it's difficult to find minority teachers because of the work force.

The problem in my opinion has persisted, however, longer than the past two or three years.

The responses beyond that have been sort of nonresponses. "We recognize the problem. We hear what they are saying," but I have quite frankly not seen a great deal of action to correct those problems.

As a member of the Bi-racial Committee, I remember [10] one particular meeting where we sat as the Biracial Committee with personnel, and we discussed these very problems, why there was an over representation in some school, majority black schools, and an under representation in others that are majority white.

I have also been told by various people throughout the system, including individuals in the, within the personnel department, that when they have attempted to place minority teachers at some of the majority white schools there has been resistance on the part of the principals who have preferred not to have any more black teachers than they have on their staff.

Q. How would you characterize the stand being taken by the white principals?

MR. SAMS: Objection, Your Honor. If she's going into hearsay, I would object to that.

MS. WILDE: Your Honor, they are all people within the system, and that's the defendants.

THE COURT: Well, I will sustain the objection. There is another grounds to it, too. Your question assumes facts which he didn't testify to. He didn't say anything about white principals. He said principals.

MS. WILDE: I'm sorry. I did not mean to do that, Your Honor.

BY MS. WILDE:

[11] Q. What—

MS. WILDE: I guess I'm a little confused as to exactly where we are then.

BY MS. WILDE:

Q. Your testimony was that it's principals at majority white schools. Was that what you had testified to?

A. Yes.

Q. And their concern was what, according to personnel which is a department of the school system—

MR. SAMS: Then that is double hearsay. He is quoting personnel said principal said. I would object on that grounds. I don't think it's relevant, and I don't think he's qualified to characterize other people's opinions.

THE COURT: I would sustain the objection if you are talking about just rumor he's heard.

Now, if this is something that has come before the board and been discussed by the board, I will allow you to go into it.

MS. WILDE: Your Honor, it's his conversations as a board member with people in the Department of Personnel who are people he has supervisory responsibilities over.

THE COURT: All right, wait a minute. You are injecting another issue that I didn't understand. You mean it's the personnel—

[12] MS. WILDE: Who are explaining why there have been some problems with Singleton.

THE COURT: All right. To the extent this has come in from the officials, the personnel officials of the school system, whether it be hearsay or not, I will permit that. If they are expressing what their problems are. All right. I will overrule the objection.

BY MS. WILDE:

Q. So—

THE COURT: If that is the question, but you couch it that way.

MS. WILDE: I will, indeed.

THE COURT: The way I understand it, you were getting neighborhood and community rumors.

BY MS: WILDE:

Q. What has been—what have you been told by people within the Department of Personnel about their problems with the Singleton Assignment?

A. I have been told that there are—when I would question why there was an under representation of minority or black teachers on the staffs at majority white schools, in some cases they have indicated to me that they have attempted to place more black teachers at these schools but have met resistance from the principals at these majority white schools, because they have not wanted any more black [13] teachers on those staffs than they had.

On the other hand, at majority white—excuse me. At majority black schools, the problem in terms of an over representation is there, and in those schools has been that many of the white teachers coming into the system have not wanted to go to the majority black schools.

Q. Has the system in your view done all it can do to accomplish Singleton?

A. No, it has not.

Q. What more do you think could be done?

A. Well, I think first of all in the area of personnel, I don't think that the number of black teachers, minority teachers, is reflective of the student body black student ratio and percentages. I don't feel that it is reflective of the county wide black-white ratio.

I have long been an advocate of targeting resources where the greatest needs are, and we have not done, I think, as much in that area as we could have.

There's been some efforts in that area recently in the last couple of years or so, but I think that more should be done and can be done.

Q. Are there other areas where racial assignments are of concern to you other than simply in the area of teachers?

A. I think there are some departments within the school system that needs addressing, such as the Department of [14] Instruction.

Q. Why is that a particular concern to you, Mr. McGregor?

A. Well, the Department of Instruction is, in my opinion, the life blood of the entire school system, and since black students make up roughly 45 percent of the overall student population, I believe that it is important to have individuals within the Department of Instruction at high adminisrative levels so that the concerns, the needs the problems of minority students from an instructional point of view can have that kind of input and can be addressed.

Unless I'm mistaken, the highest ranking individual, black individual in the Department of Instruction, is a director who is the director of the reading program. We do not have an assistant superintendent neither in elementary or secondary, a black.

Q. Have you ever discussed that with the superintendent?

A. I have.

Q. And what's been his response?

A. Well, there was opportunity last year or at the end of the school term with the retirement of the assistant superintendent for, I believe, elementary education, Dr. Betty Moore, and, of course, there were candidates for that position.

I had hoped at that point that we would have, that a black would be appointed to that position to fill that [15] position.

There were, as I understand it, among the candidates two that were being considered, but neither was appointed.

Q. Let's turn to the area of teacher experience. Has the board been aware of discrepancies in experience levels in the black and white schools?

A. The board has been aware.

Q. How do you know that?

A. I have discussed it with the board, and it's been brought to the attention of the board on numerous occasions by members of the black community.

Q. What has been the nature of the discussion around that question?

A. Well, it's varied. In terms of an explanation, it's been that the turnover in the southern part of the county where most of the black students are located has been greater and therefore when there is a high amount of turnover you tend to get less experienced teachers to replace them.

There's been a feeling and an expression that once—that many white teachers who do come to the southern part of the county remain there for three years until they have acquired tenure and then apply for transfers which causes a continuous amount of turnover in the southern part [16] of the county in the majority black schools.

Q. What, if anything, has the board been doing to address these problems?

A. I'm not sure of anything that the board has done to address the problems.

The only thing of recent that has been done as involved the Gordon and Walker high schools where there's been a merger or will be effective with the opening of school in August, and they have reduced the teacher load from five classes per day to four with the idea that perhaps this might be an incentive to many of the white teachers to remain in those schools.

I don't believe that that's the only reason for doing that, because I know that there are other reasons why this program or this concept has been put in place, and also is to be put in place at Columbia High School.

Q. Is it projected for any elementary schools at this point?

A. I'm not aware of it.

Q. What about the question of distribution of school resources? Has that ever arisen before the board?

A. When you say distribution of school resources, you are speaking, I assume, of the sending of resources where the greatest needs are?

Q. Yes.

[17] A. Yes. It's been discussed. Most recently during the budgeting process.

There has been some reluctance on some board members' part to be strong advocates I think of that because of concern for constituent reaction to that. That is to say, that if we send more resources to one particular school, that the reaction in other parts of the county might not be, might perhaps be negative, and I don't think that has been pushed vigorously for that reason.

Q. What is your view in terms of how those resources should be distributed, Mr. McGregor?

A. Well, again, I think that if there is a greater need for resources at a particular school or in a particular part of the county, then resources ought to be targeted to those needs.

I don't think the school system as a whole is healthy unless all of the parts are healthy, and unless we are doing all that we can possibly do for each of the schools can we have what might be characterized as an excellent school system.

I have no problems personally with spending or increasing the per pupil allocations at one particular school if there is a need for it and if that need can be identified and the outcome can be predicted to improve the academic achievement of students.

[18] Q. Do you see those needs as falling along racial lines, Mr. McGregor?

A. I do. I think that there is, for whatever the reasons, the problems in the majority black schools are somewhat unique to those majority black schools.

The southern part of the county has experienced an influx of students from outside of the school district that perhaps were not as prepared academically as students coming in to the county from other parts, I mean the

northern part of the school district, and the majority black students do reside and attend school in the southern part of the county.

Q. What discussions have there been explicitly trying to further desegregation on the board?

A. Well, the discussions have for the most part centered on the M-to-M program and the magnet programs that have been in place and those that are planned for the next school term.

Q. Have there been any conversations concerning implementing desegregation beyond those two notions?

A. Not in my presence, there has not been.

Q. What are your views on the M-to-M program, Mr. McGregor?

A. The M-to-M program is a program that's been in place in the DeKalb school system for a number of years. Of course, you know that it is an opportunity for those students who [19] are attending the schools where their race is in the majority to transfer to a school where their race is in the minority.

I support the program. I have had many conversations with parents about, who have asked me whether or not they should or should not M-to-M their children.

My response has been that, "That's an option that you have, and if you choose to do that, that's fine. I encourage you to be familiar with your local school, your community school, but if it's your choice to M-to-M your child, then that's your choice, and you have a right to exercise it."

I then lay out what the guidelines are in terms of application deadlines and that kind of thing.

I don't personally see the M-to-M program as an effective tool of desegregation. It involves too few students, and it involves for the most part only black students.

Q. What about the magnet school programs that we have heard—we heard Dr. Freeman testify, and I presume you have heard something about at the board.

A. I don't know—I don't know what Dr. Freeman testified to yesterday, because I was not here.

The magnet programs involve I believe even fewer students than the M-to-M program in terms of black students.

[20] There is planned a magnet school at one of our schools, Kittridge, for the opening of the school term, but I believe that will involve four to 500 students, 50 percent of which will be black, so you are speaking of 200, 250 students as a maximum.

There have been and there are other magnet programs within schools that provide some integration, but it is fairly small.

Q. Have there ever been any numbers discussed at the board concerning the number of magnet school seats?

A. There was a proposed, or there was discussion between Plaintiffs and the board on a possible settlement, and in that discussion there was a proposal by Plaintiff that would involve a much larger number of students that would provide a greater degree in my opinion, a greater degree of integration.

But that idea was not accepted by the school board and the administration.

Q. What's your view as to why M-to-M and magnet programs as they currently exist have been used by the system?

A. What is my view as to why they have been used?

Q. Probably not a good question.

Let me try another one.

What is your view as to how much desegregation is going to be accomplished by the M-to-M program and the [21] magnet school program as it currently exists?

A. Well, unless I am mistaken, and I don't—I have not looked specifically at the numbers, but I believe that the number of new M-to-M students each year has stabilized. I don't think it's increasing. I believe that we are somewhere between 5500 to 6,000 students, perhaps less, involved in the M-to-M program, and these are majority black students.

With the consolidation of schools in the northern part of the county thus putting more students into the existing

schools and closing some of those that were under capacity down, I think that tends to stifle future M-to-M, so I don't think M-to-M is a viable means for desegregating and fully integrating the DeKalb school system.

Magnet programs, unless we were to implement magnet schools such has been spoken of about the Kittridge school that would involve a much larger segment of the student population, I don't see that it's going to be an effective tool for desegregation or integrating the schools, because we are talking about relatively small numbers of students.

Q. What discussion, if any, has there been on the board concerning using attendance lines affirmatively to promote desegregation?

A. A discussion has been more reaction to members in the [22] community or plaintiffs proposing that instead of—that instead of closing schools, that attendance lines ought to be changed so as to fill those schools up or to allow for a greater degree of integration.

In other words, there's not been any discussion that I am aware of, that I have been a part of, of using attendance line changes as a means for providing for further desegregation.

In fact, there's been a reaction, a negative reaction to those proposals by the school board when it's been proposed by plaintiffs.

Q. By the way, how often are you in attendance at board meetings?

A. I have not missed a board meeting in my four and a half years to my knowledge. Perhaps a work session but never a business meeting.

Q. So I take it you would have been a party to at least conversations that went on during board sessions?

A. If they took place during board sessions, yes.

Q. Has there ever been any discussion about rolling attendance lines in order to deal with population changes?

A. Again, the discussion of that concept has been initiated by others and not school board or not school administration.

Plaintiffs have proposed that, but those proposals [23] have not met with positive receptions from the school system and the school administration.

Q. Essentially what has been the reaction from board members?

A. Well, it's varied. In many instances the feeling has been, if we have an over crowded situation at one or two schools, why disrupt other schools by changing their attendance lines.

If the problem can be dealt with by making an addition to a school which we have done in some cases, several cases. We have provided classrooms as opposed to changing attendance lines. So the response basically has been, "Let's deal with that particular school and not change attendance lines as a means of addressing the over crowded situation."

Q. How would you describe the board's attitude toward examining the racial implications of any new action or change?

MR. SAMS: Your Honor, a clarification. Is she asking for official reaction or commentary by individual board members?

MS. WILDE: Your Honor, I'm asking for what has been—I think the question could deal with either. But what's been—he's a member of the board. The question is what the Board's reaction has been in looking at those [24] changes. They are all defendants, so I don't think it really particularly matters in terms of evidence.

MR. SAMS: I think it does, Your Honor. One or two Board members could have committed to one or two other persons. Could be conversations. If she's talking about official discussions during a Board meeting, certainly. If she's talking about positions of the Board of Education.

If she's talking about casual conversations heard in the coffee shop. I think that's relevant.

MS. WILDE: Actually, I'm not even sure that's where my question goes. I was asking the Board's attitude toward how it looks at changes, new actions or changes as to their racial implications.

THE COURT: I will overrule the objection, but I expect some explanation what he means by attitude. I will overrule the objection.

THE WITNESS: Would you state your question again?

THE COURT: I think on reflection—I think I will sustain it, because the Board's attitude is expressed only by what appears in the minute book.

Now, if you want to ask an individual's attitude, Mr. X or Ms. Y or something, that's different, but the only attitude that the Board can have is what is recorded in the minute book.

MS. WILDE: Perhaps attitude is the wrong word [25] then, Your Honor.

THE COURT: All right.

BY MS. WILDE:

Q. When new changes, new actions or changes are discussed within the Board meetings, what is the manner of review in terms of their racial implications?

A. If I understand your question and what you are trying to address, I think most of the times the reaction has been what impact will it have on the court order; does the court order permit it; would it violate the court order.

It's been in my opinion for the most part if it does not violate the court order, if it does violate the court order or if in our opinion it violates the court order then we, of course, don't do it.

I just don't feel that the Board has been as proactive as we could have been and should have been.

Q. What in your view as a Board member would happen were the system to be declared unitary?

A. Well, that's difficult to say. It would depend I guess in large part on what prescription the court would give for the system.

I have some concerns, and I have some fears about what might happen or what could happen.

I am not sure that the composition of the Board—in fact, I am sure that it won't remain the same for very [26] much longer. While I have confidence in Dr. Freeman as superintendent, Dr. Freeman is not going to be superintendent forever.

I'm not sure what new Board members' attitudes will be. I'm not sure what a new superintendent's attitude would be.

I am concerned about, and my concern was heightened yesterday when I read an article in the newspaper based on the testimony of Dr. Armor, for example, as it relates to placing a limit of 20 to 30 percent on the number of or percentage of black students at a school through the M-to-M process. In other words, once a school becomes 20 to 30 percent, if I understood that article and if that reflected his attitude and feeling correctly, he testified that he thought that that would be the optimum level of integration, that beyond that you create problems.

Well, we have been in court on that issue before, and the court ruled that 50 percent was the limit and not 20 or 30 percent.

Without the court order, I can't help but be concerned and wonder if we would take steps to implement such a limit.

I am concerned that perhaps the enthusiasm for further desegregation, the enthusiasm for addressing the specific needs of minority students in DeKalb, would be at [27] the same level if there is not the feel or the fear of the compulsion of the court order to do these things.

I would certainly hope that there would be an attitude and a feeling that now that the court order is not there, we have an even greater responsibility, but I cannot predict that with certainty.

Q. What concerns do you have other than the M-to-M in the event there's a declaration of unitary status?

A. Well, I would be concerned about the attendance line changes, whether they would be done with the idea in mind of furthering desegregation as opposed to main-

taining the system, racial makeup of schools as they currently exist.

I would be concerned about whether or not we would be as vigorous in our attempts to bring in more minority teachers to the system, whether or not we would be as insistent to meet the Singleton requirements throughout the system and most especially in the majority white schools in terms of putting more black teachers on staff, whether, you know, if a court order is not there to provide that guideline.

Q. Dr. Freeman described yesterday a number of wonderful programs that are being put into place or projected or contemplated for moving the system forward.

Does that reassure you?

A. Again, I wasn't—I don't know of all the programs [28] that he spoke yesterday, and so to speak to a specific program that would be difficult.

I have confidence in Dr. Freeman, but Dr. Freeman has to work with the Board. It's made up of seven people with rather divergent opinions and attitudes about things. It's not always possible, as Dr. Freeman knows well, to get things done that he feels are the right things to do and in the best interest of the school system in light of having to deal with seven board members.

So while I don't question his intent and his desire, it has to be taken in light of what the board will allow him to do or any other superintendent to do.

Q. What in your opinion, Mr. McGregor, would be the best outcome in this hearing?

A. Well, let me respond this way. I have in the past 18 months been pleased with and have seen things done, I believe—I suspect, I should say, with the idea of preparing for this hearing, that have perhaps moved us further and closer to being unitary than perhaps the previous three or four or five or six years.

I have expressed earlier my reservations about whether or not we are in fact unitary. Without being flippant, perhaps the best thing that could happen would be that

this court would retain supervision for another 18 months or two years, and perhaps those same kinds of things that have been done in the previous 18 months might continue to be done, and the problems perhaps would be solved.

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TESTIMONY OF MARCIA BOROWSKI

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[83] BY MS. WILDE:

Q. What was the upshot of many of those situations?

MR. SAMS: I don't understand the question, Your Honor. Upshot of what?

BY MS. WILDE:

Q. What was the decision made—were any of the decisions made to your knowledge based on schools?

A. I believe they were. As I said, it was always a major concern.

For the black families who were looking to move into white neighborhoods, their primary concern was, "What kind of hostility are we going to face in the neighborhood and what kind of hostility are we going to face in the schools? Are we going to be accepted? Is my black child going to get some black cultural experience in the school? Is black history taught? Is there a recognition that blacks exist in the school if we are moving into an all white neighborhood?"

For the white families, it was primarily, "What kind of school situation is our child going to face? Are these schools good? They seem to be heavily majority black. Why is that? What is going to be the quality of the [84] education that our child is going to receive there?"

I would say that for the white families in particular who were looking to move into south DeKalb in particular, that was a major stumbling block, that they were very, very concerned about the quality of the schools, and more often than not did not make the decision to move into south DeKalb.

Q. I would like to shift focus.

Other than your work as a teacher, have you every done any other work in the area of education, Ms. Borowski?

A. I was a School Board member in Michigan before I moved to Atlanta, and I have been a member of the League of Women Voters for 17 years and as such a member of its Education Committee all those years and have worked rather extensively in education in that way, too.

Q. When were you a member of the school board?

A. I think it was in 1973 that I was elected, 1973 through 1977.

Q. How long have you lived in DeKalb County?

A. Ten years.

Q. And do you have any children?

A. Two.

Q. What are their names and ages?

A. A daughter Oralee who will be 19 next month and a son Jonathan who was 21 last week.

TESTIMONY OF MARCIA BOROWSKI

[91] BY MS. WILDE:

Q. Were there specific desegregation strategies that were considered desirable by the desegregation task force?

A. There was not a whole heck of a lot of unanimity when it came down to actually what we were going to specifically do.

I think that one of the things that we were unanimous about was that there was no doubt about the fact that the black schools in the south part of the county were perceived as being inferior and that that was a major obstacle to further integration of the schools.

Whether that was a perception alone or whether that was a reality was where the task force divided, and there were those who felt it was only a perception, and there were those who felt that was a reality, so that the task

force addressed that problem as the schools need to determine whether the schools are in fact equal and, whatever the determination, there is a perception in the community that the schools are not equal and that that problem needs to be addressed and needs to be addressed right away.

We also looked at magnet schools and, again, there was division there as to how to approach the magnet school problem.

* * * *

[93] BY MS. WILDE:

Q. Why don't we talk a little bit about the notion of middle or junior highs or Magnet, specialty schools for eleventh and twelfth graders? Were those among the things that the desegregation task force took a look at?

A. Yes. We specifically looked at middle schools and thought that that would be a viable way to provide integration.

We recommended that there be middle schools in the central area of the county that would provide an integrative experience and provide the county with middle schools.

That was not a unanimous recommendation from the task force. There were those who were worried that—

THE COURT: You said it was not unanimous?

THE WITNESS: Was not a unanimous recommendation.

There were those that were worried that sixth, seventh and eighth grade is a kind of a wild time for kids and that that might not be the best years to have their first integrative experience.

But it was a proposal, and it was recommendation to the Bi-Racial Committee that this be further explored, that middle schools in the central area of the county that could provide an integrative experience would be a possibility.

[94] We also looked at magnet schools and suggested that that, too, would be something worth looking at but, as I said, we had our concerns as to whether those would bleed off all the good students and provide unequal education between magnet schools and non-magnet schools.

Q. Were there any other specific proposals that were made?

A. We specifically proposed for the M-to-M program. We did encourage further use of the M-to-M program and further promotion of the M-to-M program and that one way to make it better and to make it more viable for the students would be to provide after school activity buses.

One of the main complaints was that children were not able to participate in any of the extra-curricular activities of the school because the minute school ended they had to hop on the bus and go home.

We also suggested that students who tried the M-to-M program be required to stay at least a quarter in the school that they had elected to go to.

There were a lot of students who were dropping out of the M-to-M program within a few weeks or even days of having gone to a new school, and we thought that they really needed to give it a try, because often—they couldn't elect M-to-M again. You only get to make the choice once during your elementary school and once during your high school career to M-to-M, and a number of children were [95] dropping out in the first few weeks.

Q. Let me show you what have been marked as 44, 45, 47 and ask you if you can identify those.

A. Forty-four are I guess minutes to the Bi-racial Committee, copies of which were sent to the task force.

Q. And what do they concern?

MR. SAMS: Your Honor, we would have no objection to those being admitted, and they will certainly speak for themselves.

MS. WILDE: I think they can certainly be admitted. I think—I simply want to make the point that indeed they do deal with recommendatidns made by the task force.

THE COURT: I will overrule the objection.

THE WITNESS: These are November 20th, 1979 meetings, and it references proposals made by the Bi-racial Committee task force to the Bi-racial Committee. One, step up the M-to-M program in the elementary schools.

Two, for the center of the county to have middle schools for all sixth, seventh and eighth grade students in the county.

Three, for neighborhood high schools for grades nine and ten.

Four, to have specialty schools for grades 11 and 12. The purpose for students interested in a certain [96] curriculum could put all study on that interest.

BY MS. WILDE:

Q. How about the rest of those exhibits?

A. Number 45 are minutes of the task force, and those —the major proposals there were to provide a late afternoon bus to allow bus students to participate in after school activities.

Two, to assign bus students to families near the school for dealing with emergencies such as sickness, injuries, et cetera.

Three, to build in incentives to encourage whites to move south and blacks to move north.

Four, to provide awareness of anti prejudice courses, workshops or seminars for students and especially teachers.

Q. And what is 47?

A. That is the summary report of the task force that we made to the Bi-racial Committee.

Q. And when was that?

A. That was March 2nd, 1981.

Q. Thank you.

I believe you testified that you are also a member of the League of Women Voters; is that right?

A. Yes.

* * * *

[99] BY MS. WILDE:

Q. And what did you find as a result of the 1979 study?

MR. SAMS: Your Honor, again, I would object. She's asking—evidently it's a study. The exhibit only refers to a summary of the study and only refers to something to do with A.P. courses.

MS. WILDE: Your Honor, she's testified that she was involved personally in making that study.

MR. SAMS: The highest and best evidence, Your Honor, would be the study, itself.

THE COURT: I will overrule the objection.

THE WITNESS: I was personally involved with the study of the courses in the high schools, and that is the part that I remember the best.

Q. Okay.

A. And, as I had said previously, at that time there were three majority black high schools in south DeKalb County.

We studied all of the high schools in DeKalb County, and we looked at the number of advanced placement courses that were offered in each school, and there were none in the three majority black schools in the south end of the county.

[100] We looked at advanced biology, chemistry and physics courses, and we looked at advanced language courses above the second year, third, fourth and fifth year foreign language courses.

And, again, we found that the majority black schools which at that time were Columbia, Walker and Gordon, did not offer any of these courses.

The majority white schools did with differing numbers. Lakeside, for example, I believe had the most of everything.

We also looked at for eighth grade the number of remedial courses and the number of standard and advanced courses that eighth graders were programmed into. When the child goes into eighth grade, they can take any number levels, number of levels of English or math and basic required courses.

Again, we found that the three majority black schools had a very large number of students in remedial courses in the eighth grade, whereas the majority white schools had a much much higher number of students entering the standard or the advanced level courses.

We broke the schools down into four categories based on percentage white and black so that there were—it was fine tuned, and the more white the school was, the more opportunities for advanced level courses and variety of [101] courses there were. The more black the school got, the less those opportunities were.

Q. How did you decide on what courses to use in that selection?

A. We basically picked those that would be geared toward an academic child going to college.

We—our committee is made up of women from all over the county, several of whom were teachers, board members, former teachers, parents, and a lot of it was based on what we knew about courses that our kids would need for college or teachers knowing what an advanced level course was that would be good, so it was kind of informally done but based on the wisdom of the committee.

Q. Have you done any update of that study?

A. In 1986, when the board asked for the declaration of unitary status, we decided to update that study.

Q. And "we" being whom?

A. The League of Women Voters' Education Committee.

Q. And were you personally involved in that?

A. Yes.

Q. What did you personally do in that study?

A. We tried to look at many of the same factors we had looked at however many years ago that was, seven years ago. We looked at the course offerings again in all of the high schools.

[102] We found that as far as course offerings went, that there had been a marked improvement. There were a number more schools that were majority black than there had been seven years ago, but we found that almost all of the schools—all of the schools, I think I can say, offered at least one advanced placement course and that the schools that previously had offered only first and second year of Spanish were now offering first, second and sometimes third year of Spanish, French and sometimes German.

There were calculus courses available in the majority black schools where there had been none before. There was occasionally an advanced biology or an advanced chemistry course. We found a marked improvement.

We still found differences with the schools, but it was not the gross disparity that we had found before in terms of the course offerings.

Q. What kinds of differences did indeed you find?

A. Again, with the majority white schools and heavily majority white schools in particular, there are third, fourth and fifth year offerings for German, Latin, French, Spanish. There are more languages offered, and there are more advanced levels offered.

In, I believe it's Dunwoody, there are four advanced placement calculus courses available; whereas, I believe in Gordon, there is a calculus course available.

[103] There are differences still in the variety of courses available, the number of sections offered.

Frequently with something like fourth year German or Latin or fifth year, that course is not a separate course with a separate teacher but it's included in the same time slot and in the same room as third year of that language, and the students kind of sit in the back of the room and progress at their own pace if they are at the real advanced level and that there's quite a bit of that going on for the third and fourth year offerings in the majority black schools.

A little bit less of that going on in the white schools. Sometimes there are more full blown fourth year French courses offered which aren't shared with the third year French course.

Q. Did you personally do any update of that study?

A. Yes. I did a few weeks ago.

Q. And what did you use to do that?

A. I used some information that you had supplied me from the schools. I think it's called the teacher locator.

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TESTIMONY OF LILA M. PARKER

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[136] BY MS. PARKER: I would say with first time buyers, they frequently are singles or couples. They buy primarily because it's an excellent location, it's good for them. They are not dealing as yet very much with schools.

Those who are upgrading generally are families who do have children of all ages. They would be the ones who would very much consider the quality of the school available in whatever community or neighborhood in which they are going.

The relocation for the most part, those people have lived in other cities in other homes. They do have children. They are frequently told by co-workers, "These are schools or areas that we like, that we live in. Why don't you look in them?"

BY MS. WILLDE:

That third category, the relocators, what counties do they tend to be settling in?

A. Well, I don't know that we could limit that. We know that the fastest growing counties supposedly at this point in time are Cobb and Gwinnett, of course, but also there are areas down—the Clayton County, the Fayette area, growing very quickly. There's a lot of the economy moving down in that direction, so I don't know that I can assess that.

Q. Of the three categories, I believe you said the second, the upgrader, are the ones who pay closest attention to the [137] schools; is that right?

A. Well, those who come in on relocation pay very close attention also. They want good schools for their children.

They frequently have an option of whether they want to go public or private, but I would say that the category where people are most concerned would be the second category that I mentioned, those people who are upgrading, because by that time they have children.

Q. Is the racial composition of those schools imporant to them in your personal experience?

MR. SAMS: Your Honor, I think she needs to qualify the question. I don't know who "them" are, and I need a breakdown on racial lines. We have no understanding from this witness yet who is her clientele.

MS. WILDE: Your Honor, she's testified that she's been selling real estate in DeKalb County for the last eight and a half years. I think that's a sufficient foundation to ask what she's found in her experience on people's preferences.

THE COURT: I took note of that, but then she indicated in a subsequent question that the listing service was hers, and maybe I don't understand it, but I didn't know a listing service was a selling agency.

Are you a real estate agent?

THE WITNESS: Yes, sir.

[138] THE COURT: What company?

THE WITNESS: Alma Fuller Realty.

THE COURT: All right. And you also have the—run a listing service?

THE WITNESS: No, sir. We are members.

THE COURT: I misunderstood you. I thought you said the Metro Listing Service was yours.

THE WITNESS: No, sir. There are two listing services.

THE COURT: Well, all right.

MS. WILDE: She's a realtor, Your Honor.

THE COURT: I understood she said that originally, but then when you identified Exhibit Number 127, I understood her to say that was her listing service. Maybe I misunderstood her apparently.

MS. WILDE: It may have been that that's one that her office uses.

THE COURT: That may be, but I interpreted it being she was operating a listing service.

THE WITNESS: Sorry.

THE COURT: All right.

MR. SAMS: Your Honor, my objection—I have yet to understand where she deals. She may be—

THE COURT: I understand, but that made a difference in she operated a listing service or whether she [139] was selling, too.

MR. SAMS: Exactly, Your Honor.

THE COURT: Do you wish to go—I will overrule the objection. You may go ahead.

You certainly may cross-examine her on it.

BY MS. WILDE:

Q. How important to the people who you sell homes to in your experience has been the racial composition of the schools?

A. It's a consideration. I don't know that it is a total—their total consideration.

I think that primarily they want to know that if they have found a home that they like in a community, that appeals to them, that is convenient and a good location, I don't think that schools can be left out of it if they have children to educate.

Q. And how high would you put the schools on the list of selection factors for choosing a home?

A. I would say that in addition to a good location that's convenient for the family, that it is of a major consideration.

Q. How do you know that the racial composition of schools is important to your clients?

A. Well, of course, one of the things you do if you are trying to find someone a home is to get to know them as well [140] as you can and talking with them as you are driving round.

They have told you a great deal about what they want prior to your ever going to look at homes.

If they have children, they frequently ask me, "What do you think of that school? Is it a good school?"

If I have never had a child in that school, I have to say, "I do not know. If you choose a home in this location, we will go to the school, and we will talk to the principal and we will look around."

That's about the only way I can handle that, because I don't have firsthand knowledge of that school.

But if there are children in the family and they have to get those children in school, it is a consideration.

Q. In your opinion, based on your experience as a realtor, what have you observed to be the racial cutoff point in the willingness of whites to consider a school? What's the comfort level you have observed?

A. Well, of course, it depends on the person with whom you are working. It depends on what kind of agenda they bring to the home they are going to buy.

My own personal experience in DeKalb County, having had a child in the schools, is that—and I'm very reluctant to use numbers. However, I would say that when you get

somewhere around 40 percent there seems to be a feeling that takes over.

[141] Q. And we are talking 40 percent in the schools, 40 percent black in the schools?

A. That's correct. In any particular school.

I think that there might be, that there very definitely could be some apprehension on the part of people who are considering that particular community.

Q. And I guess the final question is, does racial composition in schools in your view have an impact on where people decide to live in DeKalb County?

A. Of course, it certainly can, and there are times in which it does.

Q. Would it be fair to say that it frequently does?

MR. SAMS: Objection, Your Honor. That's leading the witness. I will submit it's leading the witness, Your Honor.

MS. WILDE: I will withdraw the question.

BY MS. WILDE:

Q. How often would you say it has an impact?

A. Well, I would say that at least half the time, possibly more.

MS. WILDE: That's all I have of this witness.

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TESTIMONY OF ROGER MILLS

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[190] BY MR. MILLS: The M-to-M transfer option was a part of an H.E.W. mandated standard desegregation plan adopted by the school system after negotiations in 1967.

BY MS. WILDE:

Q. And do you have any information as to how, when it became operational?

A. It was not operational until about 1973-74. There were a handful of students, among them mine, who got

involved in it and were able to transfer, but, of course, without transportation at that time.

Q. And in what year was desegregation, Brown v. Board, implemented in DeKalb County?

A. The Brown case was implemented in DeKalb in 1969 with the implementation of the June 1969 court order.

Q. And did that end all black schools in the system?

A. No. That fall in 1969, there were two schools that were majority black despite the implementation of the court order. The first school was Terry Mill Elementary School which was 76 percent black, and the second school was Stoneview Elementary which was 51 percent black.

Q. How about the other schools? Were they desegregated as a result of that decree?

A. Well, if one identifies a school as being racially identifiable by the fact that it has disproportionate student enrollment, then there would have been several other [191] schools that were racially identifiable.

At that time, you have to remember that the student population was only six percent black, so there were three other schools in addition that were racially identifiable in having more blacks in them than, say, 20 percent above the systemwide average.

Q. And what were those schools?

A. Those schools were Lithonia High School which was about 35, 36 percent black, Hooper Alexander which was 28 percent black, I believe, and—I'm trying to think. The last one escapes me at the moment.

Q. Was it Jim Cherry?

A. Yeah. Jim Cherry. That school closed a little bit later in 1974 at 42 percent black.

And back in that time though, it was, in 1969, it was about, also about 28 percent black.

The other schools though have not closed. Stoneview has remained open. Interestingly enough, after the, after 1969, instead of staying majority black, it dipped down and became majority white. It went down into the forties,

and now—it's out by Lithonia, Your Honor. It went—it dipped down in percentage black, and then it has gone back up until it's a, well, this fall, it will be a 61 percent black school, and—

Q. How about Hooper Alexander?

[192] A. Hooper Alexander was in a racially transitional area, and in the next several years, by 1972, it was a 60 percent black school, and that school still remains open and operational as an all black school today, about 99 percent, something like that, 98 percent.

Q. How about Terry Mill?

A. Terry Mill School, immediately upon becoming—well, that fall in 1969, as a black school, got a black principal and disproportionately black faculty were assigned there, and it has—for the next decade, it had disproportionately black faculty, and it's always had a black principal ever since, and presently it is a 41 percent black—or excuse me. Has a faculty that's 41 percent black, and, of course, is an all black school as far as racial composition and has been since the 1969 order was implemented.

Q. Have you ever attended meetings of the Bi-racial Committee?

A. Yes, ma'am.

Q. And when did you start doing that?

A. Well, the first meeting that, the Bi-racial Committee was in April of 1977, and I have attended up until recently—I have been a little bit lax in the recent months, but until recently, I attended every Bi-racial Committee meeting or maybe every one with one or two exceptions.

[193] Q. Has the Bi-racial Committee reviewed all the boundary changes and proposed school closings and new school construction since it was founded?

A. No, it hasn't. The committee basically did not deal with construction initially, because the school system didn't feel that it had authority over construction.

I think the issue came to a head in 1978 when the system decided to build an addition to Flat Shoals Elemen-

tary School which was then an all black school with three contiguous majority white schools nearby.

That matter was not brought before the Bi-racial Committee. They just wanted to go ahead and do it. And I, sitting out in the audience, had to raise the issue and get the committee to consider it, and that's the way that particular issue got raised, and there was some question about whether there was that authority of the committee to deal with that matter.

On school site purchases which are, which you have got to buy the land or have the land before you build the school, there was, there's been, there was a problem in which the school system did in fact bring before the Bi-racial Committee, I believe it was around 1980, a proposal to buy land in the north Lithonia area called the Stevenson Road site.

The Bi-racial Committee sought to get from the [194] school system an idea of whether that would be used for a site which would pull off some of the whites from Lithonia and convert Lithonia from its transitional or almost black state to a majority black school, and because the system was not able to provide any such assurance, the Bi-racial Committee opposed the purchase of the property.

The school system went ahead and bought the property over the objections of the Bi-racial Committee.

Q. Before the Bi-racial Committee was established, how were those kinds of boundary lines and construction issues dealt with?

A. Before the Bi-racial Committee was established, the school system at the end of the school year would notify the court of the construction and zone changes that it had already implemented, but it would not, of course, have the court approve them or seek court approval or anybody's approval before it implemented them.

Q. You live in the—is it the Bob Mathis attendance area?

A. Yes, ma'am.

Q. Have there ever been and blockbusting in that area?

A. Yes. The Bob Mathis attendance area—Your Honor, it's near I-20 and Wesley Chapel area there near southwest DeKalb High School.

When I moved in, was a white neighborhood . . . .

* * * *

[200] BY MR. MILLS: Well, the school system definitely was not going to change the attendance line. That was made very clear. They said that—the school officials then in charge said that Dr. Adams was without authority to have made the assurance that he did in fact make.

And they eventually voted through school board action to deny those children access to Briarlake Elementary School so that the kids didn't get to go.

BY MS. WILDE:

Q. Let's focus—

THE COURT: When was that, Mr. Mills?

THE WITNESS: I believe the school closings occurred in 1983, and the denial of access occurred in 1985.

THE COURT: That was after the Lakeside litigation?

THE WITNESS: Yes, sir.

BY MS. WILDE:

Q. I would like to shift gears again to talk a little bit about faculty and Singleton. I believe you have prepared an exhibit summarizing some of the documents already in evidence on that point; is that right?

A. Yes, ma'am.

[201] Q. Can you explain what it is you have done, what you have reviewed, what documents you have looked at to generate this exhibit?

A. Yes. What I have is basically a summary, a compilation of those schools which deviate from the 1969 and 1976 court orders with respect to the assignment of faculty from 1969 through the current or the most recent school year.

That information was gotten from defendants'—I don't see an exhibit number on it. It's a computer run that was done and—I think I'm getting some assistance.

Q. It may well be 41. I'm not sure.

Why don't you take a quick look at it so the record is straight?

MS. WILDE: It is indeed Exhibt 41.

THE WITNESS: From Exhibit 41. And then I simply put down the, what the court orders said, basically, the—should I proceed?

BY MS. WILDE:

Q. Why don't you explain what indeed the chart says?

A. Basically what the charts shows is that the school system has had about 18 years of opportunity to comply with two different faculty assignment orders and has not been successful in one of those 18 years.

Q. When you—what were you using as the compliance standard as you generated this chart?

[202] A. The—I used for the first several years the 1969 court order. Basically, the 1969 court order states teachers, principals and staff members shall be assigned to schools so that the faculty and staff is not composed exclusively of members of one race.

For the first several years, there were a number of schools that had, after the order was implemented, there were a number of schools that had no black teachers assigned to them.

There were in addition about, I believe there were about, that are not on this chart, something like 38 or 39 additional schools that had maybe one teacher, one black teacher assigned to it but I didn't count those

schools because of the following wording. It says, "whenever possible, teachers shall be assigned so that more than one teacher of the minority race, white or Negro, shall be on the desegregative faculty."

Since it had the words "whenever possible," I felt that there was some leeway there and shouldn't count those schools.

Then on the black schools, there's another provision in the court order. It says, "The county board shall establish as an objective that the pattern of teacher assignment to any particular school not be identifiable as tailored for a heavy concentration of either Negro or white [203] pupils in the school."

I used for that particular standard, any school in excess of ten percent of the system wide faculty ratio, racial ratio.

For example, if in elementary schools it was—I will just make up a figure, let's say it's ten percent. I wouldn't count it unless it were above, not at but above 20 percent.

Q. Okay, and that's indeed how the first then two pages of this chart are done until we reach the 1976 court order; is that right, sir?

A. Right. That was the order—those were the orders under the, the requirements that the school system was under through 1966.

Q. '76, is it?

A. '76. Excuse me.

Then in November 3rd, 1977, the court through the late Judge Edenfield issued a second order dealing with faculty assignment, and at that point I used that standard. That standard says that, "The ratio of black to white teachers in each school must be substantially similar to the system wide racial ratio. Defendants are required to reassign teachers with all deliberate speed so that the racial distribution of faculty at all schools approximates the distribution of faculty in the entire system."

[204] This is what is often referred to as the Singleton ratio.

Q. And, again, what were you using as you were looking at the black schools in the far right column?

A. Both the black and the white schools, I used in excess of ten percent variation from the school system.

For example, in the most recent school year, there are six schools that are out of compliance. The elementary standard is 28 percent. That means the system wide percent black faculty is 28 percent, and there are four white schools that are less than 18 percent, and there are two black schools that are more than 38 percent.

Q. And this was done using Defendants' Exhibit 41; is that right?

A. That's correct.

MS. WILDE: Your Honor, I would offer this document into evidence as a chart summarizing Defendants' Exhibit 41.

MR. SAMS: We would object, Your Honor, because what he has on this chart is schools not complying, and there's been no testimony—no ruling yet what is in compliance. That's part of the task of this court.

As to his numbers, if he wants to say these are the schools that he studied and found there was a deviation of more than ten percentage points above or below, I can [205] understand that.

THE COURT: That's what he's testified that he's calculated.

MR. SAMS: But I only take objection with the compliance.

THE COURT: What's the exhibit number?

MS. WILDE: This will be 128, Your Honor.

THE COURT: You don't object to it being beyond the numbering?

MR. SAMS: No, Your Honor.

THE COURT: All right, sir. I will admit 128.

BY MS. WILDE:

Q. Have you done any examination of the current racial composition of the—current racial assignment of the principals within DeKalb County schools?

A. Yes. The—yes, I have.

Q. And what were you using in order to make that?

A. I'm sorry. I can't hear you.

Q. What document did you use in order to—where did you pull the numbers?

A. I believe I checked them against Defendants' Proposed Findings of Fact.

Q. All right, sir.

A. And I believe also they were—well, I can't recall the exhibit number.

[206] Q. They are defendants' figures? Is that what you are saying?

A. Yeah.

Q. And indeed, what are the numbers that you found in terms of numbers of black and white principals and assignments?

A. Well, you have 29 black principals, and 19 of those are in black schools. You have 55 white—wait a minute. I believe you have 63 white principals, and 53 of them are in white schools, so there seems to be some sort of correlation between principal assignment and racial composition of the students, predominant race of students served in the school.

Q. There was also some questions this morning about getting more black teachers into the black schools. Was that ever addressed by you to the Bi-racial Committee or to the system?

A. Yes. One of the problems that has been—there's been a tension, I think, Your Honor, between the need to get more black teachers in the system as a whole without taking the teachers from the black schools and putting them into the white schools.

Basically, the people with whom I am familiar have not sought to achieve the Singleton ratio by taking any

black teachers out of the black schools but rather meeting it this way, by adding more teachers to the system as a [207] whole and bringing the black teacher level up overall so that the black schools would not be out of compliance.

Indeed, a delegation consisting of—

THE COURT: You mean so that the white schools—

THE WITNESS: Pardon?

THE COURT: Didn't you say so that the black schools wouldn't be out of compliance?

THE WITNESS: Yes. Basically, the—the black schools had for the most part had disproportionately black teachers, and the white schools usually for the most part in recent years have, except for the most recent years, have been almost in compliance or just barely into compliance.

Basically, what the idea was was to hire more teachers as a whole rather than taking your existing pool of teachers and simply taking them out of black schools and adding them to white schools.

So what we did in 1978, there was a delegation of Dr. Eugene Walker and myself and I think the principal or the P.T.A. President of Gordon, and we tendered a proposal to the school system basically asking that they do their utmost to hire some more black teachers.

In 1980, two years later, the Atlanta S.M.S.A., relevant labor market of black or of elementary and secondary teachers, was about 26 percent black, but still two years after our proposal the school system only had 20 [208] percent black teachers, and what we were doing was basically urging them to do their darnedest to hire more black teachers and to comply with Singleton by that means.

BY MS. WILDE:

Q. I have just one final question.

There was—in your view, is it true that no child currently attending school in the system has ever attended a racially segregated school before?

A. Well, segregation is segregation, and the children in the schools don't make any distinction. About 17,000 of the almost 34,000 black children in the school system are in schools that are 90 percent or more black.

Those children, I think, do have the opportunity to M-to-M, but the burden is on them as opposed to being on the system.

Segregation is still segregation, so they either have to, have to assume the burden of desegregating, themselves, or they have to continue in the segregated situation.

MS. WILDE: I have no further questions of this witness.

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TESTIMONY OF STEVEN PARKER COLE

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[8] BY MS. WILDE:

Q. What categories did you use initially for purposes of this analysis?

A. Okay, the initial categories were based upon racial identifiability, and the categories, the types of schools were three in nature.

The Type I School which we can label long-term white schools, were schools that were less than 50 percent black in 1976 and less than 50 percent black in 1986.

The second type of school, called Type II, you can label them long-term transitional, schools that were less than 50 percent black in 1976 but are greater than 50 percent in 1986.

The third type of school, long-term black schools, were greater than 50 percent in 1976 and remained greater than 50 percent in 1986.

Q. Doctor Cole, let me show you what has been marked as Plaintiffs' Exhibit 96 and ask you if you can identify that?

A. This is a list of the elementary and high schools broken out by type of school.

Q. Thank you.
THE COURT: What is that exhibit number?
MS. WILDE: 96.

BY MS. WILDE:

Q. Who defined these categories, Doctor Cole?
[9] A. I believe they were originally defined by Dr. Robert Dentler.

Q. Did you compare that typology with any other measures of racial composition, Doctor Cole?

A. I did. I compared them with four other kinds of measures.

Q. And what were those measures?

A. Percent black students in individual years. We use percent black students in 1984, '85 and '86. I also compared them to the average black percentage over three time spans, '76 to '84, '76 to '85, and '76 to '86. I also compared them to two other measures that have been used in this kind of case. The dissimilarity index and the racial exposure index.

Q. What tests were run on these measures? How did you compare them?

A. They were tested correlationally.

Q. And what was the result of that test?

A. The result of these tests were that these—all these different measures were highly related to one another, highly interrelated.

Q. And what does that tell you?

A. It tells you that they are essentially measuring aspects of the same thing.

Q. So, essentially what you are saying is the typology, for example, is measuring the same as those other racial measures?
[10] A. That's correct; that's correct. It demonstrates an aspect of validity of the typology.

Q. After you checked on the typology, what else did you do, Doctor Cole?

A. I utilized the typology to evaluate a number of treatment aspects of the school system and a number of outcome measures.

Q. And what do you mean by "treatment aspects?"

A. Excuse me. Aspects that are under the control of the system, the school system, things like number of books in the library, where teachers of various educational levels are placed in schools, years of teaching experience that a teacher might have, expenditures per school, variables of that nature.

Q. And what do you mean by "outcome measures?"

A. Outcome measures are variables—student measures that one might assume to be outcomes of the educational process, achievement test scores, percentage of students at a particular school that are not promoted.

Q. How did you determine which characteristics and outcome measures you would use?

A. Most of these measures were available or were requested before I was involved in the case. They were somewhat limited by what the defendants proffered. Some of the variables are requested, I believe, by Doctor Dentler.

Q. What kinds of analyses did you run on these variables?

A. I ran what are called analyses of variance.
[11] Q. And how did you—how did you classify the schools for these analyses purposes?

A. Okay, let's take the elementary schools, for example. There are 45 elementary schools that are in the —45 that are in the Type I category, 14 in the Type II category, and 14 in the Type III category.

So, for each of these treatment measures averages or means were calculated by type of school, and then those averages were compared to one another to see if there were any differences between these types of schools.

Q. And did you do any statistical analyses of these differences as well?

A. Yes. The analysis of variance or its acronym, ANOVA, is the statistical test that's used.

Q. Let me show you what have been marked as Plaintiffs' Exhibits 86 and 87. I think you may have these separately, they are very large, and simply ask if you can identify these?

A. These are two copies—copies of two computer printouts. One is for elementary schools, one is for high schools, and these are the results of the analyses of variance.

MS. WILDE: Your Honor, I think they may have been in a separate folder because they are so huge.

THE COURT: All right.

BY MS. WILDE:

Q. And what, again, is ANOVA, Doctor Cole?

[12] A. It's a statistical test to determine whether or not the averages or means, and I will use these terms interchangeably, they mean the same thing, whether they are significantly different from one another.

Q. And what was your criteria for determining levels of statistical significance?

A. I used the criterion that's used in science and law, probability value, and the criteria goes something like this. When there's a less than five percent chance or five percent probability that your pattern of data is happening by chance, by chance alone, then your findings are considered statistically significant. So, the more the averages of the three types of schools might differ from one another the more likely the analysis of variance would be statistically significant.

Q. And did you do elementary and high school together?

A. I did them separately.

Q. Okay.

MS. WILDE: Your Honor, I'm going to be going through a series of charts. You have them in small form in your binder, and I will be putting up a slightly larger version on the board.

THE COURT: All right.

BY MS. WILDE:

Q. Doctor, let me show you what have been marked as [13] Plaintiffs' Exhibits 97(a), (b), and (c). What are those? What are those charts?

A. These are bar graphs where each of the bars represent the years of teaching experience for teachers in each of the three types of schools.

Q. What was the source of your data for this chart?

A. Okay, the course of these data were the teacher computer tapes supplied as to me by the school system.

Q. Okay.

MS. WILDE: Your Honor, at this point I would simply point out there has been a stipulation as to the accuracy of those tapes. It is Stipulation Number 14.

BY MS. WILDE:

Q. Would you please explain, let's start with Chart "A", what this chart shows.

A. Okay, the vertical axis, the height of the bars represents the average number of years of teaching for each type school.

So, for example, the Type I school, it has the figure 9.55 at the top of the bar. That means on the average the 45 elementary schools had nine and a half years of teaching experience in DeKalb County.

When you move over to Type II, the transitional schools, the average number of years of teaching experience in DeKalb is 6.45.

[14] When you move over to have the Type III kind of school, the average years of teaching is 5.24.

Q. Are those means statistically different from one another?

A. They are. Using the analysis of variance and some techniques, other statistical techniques, it has been determined that Type I is statistically different from II, II is different from III, and I is different from III. These averages were so different from one another, the probability of this pattern of data occurring by chance

is less than one in ten thousand. These are highly statistically significant findings.

Q. And this was for 1984-'5, is that right, Doctor?

A. That's correct.

Q. And you also have a chart for 1985-'6, do we not, 97(b)?

A. Yes, we do.

Q. And could you please tell us what that shows?

A. This essentially shows the same pattern as the '84-'85 data. It shows Type I with average number of years experience, 10.22, Type II has 6.9, and Type III is 5.46.

Q. Again, what is the statistical significance of that?

A. All three groups are statistically different from one another.

Q. And 97(c) I believe is '86-'87. Could you tell us what you found there?

A. In this case, in 1986-87, in the Type I schools, [15] significantly different from Type II and from Type III. In this particular instance, Type II and III are close enough together that they are not statistically significant.

Q. And am I correct that both Type II and III are now over 50 percent black?

A. That's correct.

Q. What are the numbers there, Doctor Cole?

A. For Type I you have 9.79 years of teaching experience; Type II, 6.36; and Type III, 5.19.

Q. Let's move to another area.

Let me show you what has been marked as Plaintiffs' Exhibit 99 and ask if you can tell me what that concerns?

A. This concerns the highest level of educational attainment for DeKalb's teachers.

Q. And, again, what is the source of your data for this, Doctor Cole?

A. These data come from the 1986 teacher tape, computer tape.

MS. WILDE: Again, covered by the same stipulation, Your Honor.

BY MS. WILDE:

Q. Can you please explain what we see on the chart on Plaintiffs' Exhibit 99?

A. Okay, in 99 the height of the bars reflects the average percent teachers with graduate degrees teaching in each of the [16] three types of schools. A graduate degree was defined as a Master's, a Ph.D., or Specialist's Degree.

Q. And what do we find when we look at the typology of the three types of schools in this case, Doctor Cole?

A. Well, in Type I, the long-term white schools, approximately 75 percent of the teachers have graduate degrees.

In the Type II schools, the transitional schools, 62 percent of the teachers have graduate degrees.

In the Type III schools, the long-term black schools, 53 percent of the teachers have graduate degrees.

Q. What is the statistical significance of these differences, Doctor Cole?

A. The differences between the three types of schools are statistically significant between I and II, and I and III, and between II and III.

Q. And what does that mean about the probability of that occurring by chance, Doctor Cole?

A. The probability of this happening by chance is minimal.

Q. And, again, the meaning of "minimal" in this case would be what in terms of level of statistical significance?

A. It means that there is less than a five percent probability that this particular pattern of data is happening by chance.

Q. Let's turn to, yet, another area for elementary schools. [17] Let me show you Plaintiffs' Exhibits 101(a), and 101(b).

A. Yes.

Q. Can you tell me what it is that we are looking at on those graphs?

A. Once, again, we have the same bar graph format, and in this case the height of the bars represents the average percent of teacher turnover in the three types of schools, and "turnover" is defined as teachers who resign, who leave for one reason or another, or reassigned or transferred out of the schools. These figures are compared to the numbers of teachers who are present in the beginning of the year.

Q. Let me show you what has been marked as Plaintiffs' Exhibit 9 and ask if you can identify that?

A. This is the tables of staff turnover that I utilized to make the calculations.

MS. WILDE: Your Honor, again, we have of the Stipulation Number 16 as to the accuracy of the information contained in these tables.

BY MS. WILDE:

Q. Can you please explain what it is we are seeing when we look at teacher turnover '84-'5, which is 101(a)?

A. Well, for the Type I schools there are approximately eleven percent of the teachers in 1984-'85 who left for one reason or another.

In the Type II schools, 23 percent of the teachers [18] turned over, over twice the number.

Q. And that's on the average?

A. On the average, those schools in that particular type.

Q. How about about Type III?

A. Type III you have approximately 20 percent turning over.

Q. And, again, what's the statistical significance of those differences?

A. In this particular case, the differences between II and III are not significant, but Type I is statistically significant from both Types II and III.

Q. So, basically Type I, which is the white schools, is different from both II and III, both of which are black schools at this point, is that correct?

A. Correct.

Q. And do we also have information for '85-'86 concerning teacher turnover?

A. We do.

Q. And is that 101(b)?

A. Yes, it is.

Q. Can you please tell us what we are seeing there, Doctor Cole?

A. We are seeing the same measure, but now in 1985-86, and the same pattern maintains, that the Type I schools, the largely white schools, are significantly different from the Type II and Type III schools.

[19] Q. Let's turn to yet another treatment characteristic, Doctor Cole. Let's look at Plaintiffs' Exhibits 103(a) and (b). What are we looking at there?

A. Okay, for DeKalb County's elementary schools in the 1984-'85, we are looking at a number of library books per student by type school.

Q. Let me show you what has been marked as Plaintiffs' Exhibit 54 and ask if you can identify that.

A. This is the source of my data for this particular exhibit.

MS. WILDE: And, Your Honor, we have Stipulation Number 13 by Defendants as to the accuracy of this exhibit.

BY MS. WILDE:

Q. Can you tell us what we are seeing here, Doctor Cole?

A. The height of the bar in these graphs represents the average number of books per student in the schools, in each of the three types of schools.

The Type I school, largely white schools, we have on the average 23 books per student; Type II schools, 16; and the Type III school 17 books.

Q. What's the statistical significance of that?

A. Type I is statistically different from both Types II and III.

Q. And we also have that data for '85-'86, do we not, on 103(b), Doctor Cole?

[20] A. We do.

Q. What are we seeing there?

A. Same pattern. We see the Type I school being significantly greater than either Type II or Type III schools.

Q. Let's switch to per pupil expenditure.

Doctor Cole, let me show you what has been marked as Plaintiffs' Exhibit 104 and could you please tell me what we are taking a look at there?

A. These are the expenditures per pupil by type of school, 1984-'85, and the expenditures is calculated on the document I received, total expenditures divided by the average daily attendance in the schools.

Q. Let me show you what has been marked as Plaintiffs' Exhibit 4 and ask if you can identify that?

A. This is the exhibit from which I gathered the data.

MS. WILDE: And, again, Your Honor, we have Stipulation Number 19 as to the accuracy of this exhibit.

THE COURT: All right.

BY MS. WILDE:

Q. Can you please show us what we are seeing on this exhibit, Doctor Cole?

A. Well, we have our three types of schools, three types elementary schools, and for the Type I school, the largely white schools, on the average for those schools the expenditures per pupil were $2,833.

[21] For the Type II school, the transitional schools, on the average the expenditures per pupil were $2,540.

For the Type III, the expenditures per pupil were $2,492.

Q. And, again, what is the statistical significance of those differences, Doctor?

A. The Type I school was significantly greater than either Type II or Type III.

Q. Let me show you what has been marked as Plaintiffs' 105 and ask you what variable we are looking at?

A. These are the number of students who were retained, that is, not promoted, in 1984-85. In DeKalb's elementary schools.

Q. Let me show you what has been marked as Plaintiffs' Exhibit 7 and ask if you can identify that?

A. These are the data that indicate the number of students who were retained instead of being promoted.

MS. WILDE: And, Your Honor, we have a Stipulation Number 25 as to the accuracy of this information.

BY MS. WILDE:

Q. Can you please tell us what it is we are seeing on this chart, Doctor Cole?

A. We are seeing the average percentage of students who were retained in the particular schools as defined by the typology, and what we see is that two percent of the students in the Type I schools were retained, whereas in Type II four percent [22] were retained, and in the Type III school three percent were retained.

Q. Is there any statistical significance to these differences?

A. There are. The Type I schools are significantly less than either Type II or Type III schools.

Q. And it is statistically significant?

A. Yes.

Q. Let me show you what have been marked as Plaintiffs' Exhibits 107(a) and (b) and ask you what it is we are taking a look at there, Doctor Cole?

A. This particular graph is labeled "Grade Seven Reading Level Failures by Type of School."

Q. And can you explain briefly what that is?

A. It's a measure of grade seven students' failure to complete reading series levels and, yet, being promoted.

Q. Let me show you what has been marked as Plaintiffs' Exhibit 6 and ask you if you can identify that?

A. These are the number of students by race who completed grade seven but did not complete the series level in reading and mathematics.

Q. Just so I understand, you are saying they are being promoted without completing their levels, is that essentially right?

A. That's correct.

[23] MS. WILDE: Your Honor, we have a stipulation as to the accuracy of this. It is Stipulation Number 22.

BY MS. WILDE:

Q. Can you please explain what it is we are seeing there? What are the graphs showing us, Doctor Cole?

A. We see for Type I that 33 percent of the students in grade seven have reading level failures. For Type II schools it is 64 percent. For Type III schools, the largely black schools, the figure is 70 percent.

Q. What is the statistical significance of those differences, Doctor?

A. The Type I schools are significantly different from both Type II and Type III school.

Q. The Type III is about double Type I, is that right?

A. It's more than double.

Q. Let's look now at 107(b), what is that showing?

A. (b) shows the same kind of data, but now we are dealing with math level failures. The Type I schools have 51 percent rate, Type II have a 73 percent rate, and Type III have a 75 percent rate, and the Type I is significantly different from both Types II and III.

Q. Doctor, did you also look at that variable by race?

A. I did.

Q. What were your findings?

A. I found that higher percentages of both blacks and [24] non-black students failed in Type II and Type III schools. That was for reading levels.

When math levels were examined, higher percentage of blacks failed in Type II and Type III schools.

Invariably for both reading and math levels, a higher percentage of black than non-black students failed in non-black schools.

Q. Can you tell us what those numbers are, since we don't have a chart that does that for us, Doctor Cole?

A. Let's deal with reading level first. For the Type I school the figure is 46.1. For non-blacks it's 29.1.

For Type II, it's 67.4 for blacks. For non-blacks it's 48.2.

For Type III school, the figure is 70.0 for blacks and 41.2 for non-blacks.

Now let's switch to math level failures. For the Type I school, for black students it's 64.0. For non-blacks it's 46.3.

Type II, it's 76.2 black, 56.5 non-black.

For Type III, it's 75.8 and 38.2 for non-black.

THE COURT: That's the lowest figure of all of them.

THE WITNESS: I think the lowest figure was non-black in Type I.

THE COURT: What was it?

THE WITNESS: 29.1.

[25] THE COURT: 29. All right.

BY MS. WILDE:

Q. Let me show you what have been marked as Plaintiffs' Exhibit 108. We have three, (a), (b) and (c). What are we looking at there, Doctor Cole?

A. This is a slightly different form of the bar graph —of the bar graphs we have been looking at. These are the—this is a representation of the Singleton Index by type of school.

Q. What's the Singleton Index, Doctor?

A. It's a measure of the percentage black teachers in a particular school when it is compared to the system-wide percentage black teachers.

Q. And what do you get as the range that that index can vary from?

A. Let me give you an example. If you have—if the district-wide percentage black teachers is 27 and the par-

ticular school in question had 27 particular black teachers, the Singleton Index would be one.

THE COURT: Would be one or zero?

THE WITNESS: It would be one. 27 divided by 27. But on this particular graph it would be zero.

THE COURT: All right. Excuse me.

THE WITNESS: Okay. You are ahead of me.

A. So, we are dividing percent black teachers in the school by percent black teachers in the district. So, if the number [26] of teachers in a school is lower than the overall district-wide figure, then your number is going to drop below one, means that black teachers are underrepresented in that school. The reverse would happen if there are more black teachers in that particular school when compared to the district-wide percentage.

Q. Is that how that chart is done, Doctor Cole?

A. No.

I did the chart as a deviation from the Singleton Index. The zero level on this particular chart would represent a Singleton Index of 1.0. If a school or group of schools on the average had Singleton Indices lower than one, then the bar would drop below that zero line. If there was overrepresentation of blacks, black teachers in the school, then the bar would be above the zero line.

Q. And, again, are we looking at schools individually, or how are we looking at schools?

A. We are looking at them by type. We are looking, on the average, for Type I 45 schools, in Type II 14 elementary schools, and Type III 14 elementary schools.

Q. What was the source of your data for this exhibit?

A. These data were taken directly from the computer teacher tapes.

MS. WILDE: Again, Your Honor, we have stipulations as to their accuracy.

[27] BY MS. WILDE:

Q. Could you tell us what we are seeing as to '84-'85 in elementary schools, Doctor Cole?

A. On the average, the Type I schools are underrepresented with black teachers. The figure there is minus .10.

On the average Type II schools are somewhat overrepresented with a figure of .06.

The Type III schools are over represented by a figure of .26, meaning that the Singleton, on the average, the Singleton Index for the Type III schools is 1.26

Q. And can you explain the statistical significance of those differences, Doctor Cole?

A. When you compare these averages statistically, Type I is different from Type II and Type III, and Type II is different from Type III as well.

Q. Did you run analyses of the years on Doctor Cole?

A. I did it for '85-'86, and '86-'87.

Q. Tell us what we see on I believe that's Chart 108(b) for '85-'86.

A. For "b" the pattern is slightly different, although Type II schools and Type III's are overrepresented by black teachers, they are not significantly different from one another, but the Type I school is significantly different from the largely black schools. The figure for Type I is minus .2, and, again, this is a deviation from Singleton.

[28] Q. Minus what, Doctor?

A. .12.

Q. All right.

A. For Type II it would be .16, and for Type III it would be .23.

Q. Let's take a look at '86-'87?

A. Okay, for '86-'87 we have a more distinct pattern. You have a deviation from Singleton in the Type I schools of minus .17, for Type II schools the deviation is a plus .10, and for the Type III schools the deviation now in 1986-87 is .44, representing on the average of Singleton of 1.44, representing an overrepresentation of black teachers in those schools.

Q. I believe that figure is almost double what it was in '85-'6, is that right?

A. The deviation is, yes.

Q. And, again, what is the statistical significance of those differences?

A. All three types of schools as reflected in that chart is significantly different from one another.

Q. Let me show you Plaintiffs' Exhibit 110. Please tell me what it is we are looking at there, Doctor Cole.

A. This is a chart of the—some of the results of the California achievement testing done in the DeKalb County elementary schools in the fall of 1984.

Q. And what was the source of your data for that chart?

[29] A. It was an exhibit delivered by defendants, and I do not have the exact number.

Q. Would exhibit "h" refresh your recollection, Doctor Cole, or do you know?

A. I don't know.

MS. WILDE: Your Honor, we do have a Stipulation Number 20 as to the information provided by the defendants as to the CAT on their interrogatory answers and to their accuracy.

BY MS. WILDE:

Q. Can you tell us what it is we are seeing on that chart by type, Doctor Cole?

A. These data is prepared by Defendant of the combination of reading and math scores on the California Achievement Test, and for the purpose of this exhibit they are measuring them N.C.E. scores, normal curve equivalent, and what you see on this chart are the averages for the combination of reading and math for grades two through seven.

Q. Okay.

And can you tell us what we are seeing for the various types, Doctor Cole?

A. Okay, for Type I the average N.C.E. scores are 127.44; Type II, 103.07; and for Type III, 88.71.

Q. And what is the significance of those differences, Doctor Cole?

[30] A. Each of the three types of schools are significantly different from one another.

Q. We have been talking about elementary, have we not?

A. Yes, we have.

Q. Let's switch to high school on some of these same level—same treatment characteristics.

What were the data sources for the high schools?

A. They were the same as the sources in elementary schools.

Q. Let me show you Plaintiffs' Exhibit 98, and I believe we have (a) and (b) on these. What are they looking at there?

A. For this is years teaching in DeKalb County by type of school and for (a) it's '84-'85.

Q. What are we seeing in terms of the average years teaching by type?

A. For Type I, we have an average experience level of 7.99 years for these largely white schools. For Type II, the transitional schools on the average, for those schools the experience level is 6.83 years. For Type III the average numbers of years teaching in DeKalb County is 5.34.

Q. Again, what is the statistical significance of those differences?

A. In this particular analysis, the Type I school is significantly different from the Type III school.

Q. Let's switch to '85-'86. What do we find there, Doctor Cole?

[31] A. Essentially the same pattern. In '85-'86 for Type I, the average years experience is 8.74. Type II is 7.14. For Type III it is 5.68. Once, again, Type I is significantiy different from Type III.

Q. And I was wrong. We have a 98(c). '86-'87, what do we find there, Doctor, Doctor Cole?

A. We find that the average years of experience now for Type I is 8.9; Type II is 7.08; and Type III is 4.91. For '86-'87, Type I is significantly different from both Type II and Type III.

Q. Over the years, what direction has the Type I been moving?

A. Over the years the Type I schools have moved from 7.99 to 8.74 to 8.90, slight increase.

Q. And how about the Type III?

A. Type III moves from 5.19, 5.34, 5.68.

Q. Let's try those again. What is '84-'85?

A. I'm sorry. I'm reading off the wrong—I was reading from elementary there. I was wondering why you asked that.

'84-'85, the figure is 5.34. For '85-'86, it is 5.68. Then in '86-'87 it drops to 4.91.

Q. Let's take a look at Plaintiffs' Exhibit 100. What is that?

A. It's teachers' level of educational attainment for '86-'87, broken out by type of school.

[32] Q. And generally what do we find there?

A. What we find here is that the Type I school, on the average, have more—a larger percentage of them have graduate degrees than either Type II or Type III schools.

Q. At a statistically significant level, Doctor Cole?

A. Yes.

Q. How about 102, what are we looking at there?

A. Okay, 102, you've got for '84-'85, once again, we are looking at teacher turnover, and for the DeKalb high schools in 1984-'85 the average percent teacher turnover is 17 percent.

Q. For which kind of schools?

A. Type I, 17.09 percent; for Type II, it's 27.30 percent; and for the Type III schools, the largely black schools, the percentage of turnover is 32.63.

Q. You say "largely black". Are Type II also largely black?

A. That's correct. Type III have been largely black for over a decade.

Q. What is the statistical significance of those differences, Doctor?

A. The Type I schools are statistically different from Type II's and Type III's.

Q. Let's turn to another year. 103(B) shows '85-'86, does it not?

A. That's correct.

[33] Q. And what do we find there by type?

A. By type we find 12.59 percent of the teachers in Type I turning over, 19.58 in the Type II teachers turning over, and 31.42 percent of the Type III teachers turning over. Now in 1985-86, all three times of school are significantly different from one another.

Q. And what is 106? What does that show?

A. All right, 106 is a representation of student retentions by type of school for DeKalb high schools in 1984-'85.

Q. And what do we show there?

A. What we show are for the Type I schools 4.0, 4 percent of the students are retained, not promoted. 8.35 of the Type II students are not promoted. 14.26 percent of the Type III students, in the Type III schools, are retained.

Q. What is the statistical significance of those differences?

A. All three types are significantly different from one another.

Q. What is 109? We have (A), (B) and (C), I believe, on 109.

A. We are back to the Singleton Index, now we are doing it for the high schools in contrast to the elementary schools.

Q. Are we using the same mode of calculating the index, Doctor Cole?

A. Same form.

[34] Q. Can you please tell us what we see for '84-'85?

A. '84-'85, we see the Type I schools underrepresented with black teachers. The deviation is minus .08, the Type

II schools, a very slight overrepresentation, and for Type III schools the deviation from index of 1.0 is 3.6.

Q. On the average?

A. On the average.

Q. And the statistical significance of those differences?

A. Type III is significantly different from both Types II and III.

Q. Let's look at '85-'86. What do we see there?

A. This is, once again, the Singleton Index. For Type I schools there's an underrepresentation of .12, negative .12; Type II schools have a deviation from Singleton of .08; and for the Type III schools the figure is .01.

Q. The statistical significance of that difference?

A. All three times are significantly different from one another.

Q. And let's look at '86-'87 for high schools. What do we find there?

A. For '86-'87 we find Type I to be underrepresented with white teachers—underrepresented with black teachers; the figure is minus .10.

The Type II schools are overrepresented. The figure is .09.

[35] For the Type III schools the deviation from Singleton is .29.

In this particular year Type I schools are significantly different from Type II's and III's.

Q. Finally, let's look at Plaintiffs' Exhibit 111. What does that show us?

A. This is the California Achievement Test for reading and math for grade nine.

Q. Is that the only year you had, Doctor Cole?

A. That is.

Q. And can you please tell us what we find by Type There?

A. We find the average N.C.E. scores for the Type I schools to be 122.43; for the Type II schools, 98.40; for the Type III schools it's 77.67.

Q. And the significance of those differences is what, Doctor?

A. Type I is significantly different from Type II and Type III.

Q. This is, again, at the .05 level, is that correct?

A. That's correct.

Q. Using these same kinds of analysis of treatment characteristics, did you do any other kind of graphs?

A. I did, I did.

Realizing that we had many, many bar graphs here, many different kinds of measures, I put together a summary or [36] composite bar graph.

MS. WILDE: Your Honor, you don't have a copy of that in your—this is done by—I'm not sure color will help, but that is done by color, and I have given a copy—I have one for you as well.

LAW CLERK: Thank you.

BY MS. WILDE:

Q. What do we have there, Doctor Cole?

A. This is a summary graph of the resource or treatment variables and the outcome measures by type of schools. We have got three groups of bars here. For Type I we have got a group of them, for Type II we have a group of them, and we also have a group of them for Type III.

It is important to make a few points clear about this graph. In order to summarize the measures we have looked at so far it is necessary to standardize them, that is, in order to compare books, which might range in number of 20 to 30 to expenditures which are numbers in the thousands, I standardized the measures. I essentially made scales for each of the variables. So, for each variable, a school was created where the middle-most point was 50 percent, and the range is from 10 to 90.

Another point should be made as well. There are a number of those variables where the direction of the bar

was changed. So, for example, teacher turnover, the direction was [37] changed so that a low value will be represented by a bar above the graph, and the variables like that are teacher turnover, student retentions, reading failures, and math failures.

Q. Why did you do that, Doctor Cole?

A. I did it so—I made the assumption that some of these variables, larger amounts of them would be beneficial to the education of the student and to the overall educational outcome of the schools in general.

Q. Why did you change the numbers?

A. Well, I changed for two reasons. I changed the numbers so we can compare them—

Q. Okay.

A. —on a scale, and I changed the direction so that positive measures would all be in the same direction.

Q. And is the change you did uniform throughout all types for each of those?

A. It is.

Q. Did you do the same thing for high schools, Doctor Cole?

A. I did. But I would like to spend a little more time with this.

Q. Please.

A. I would like to take one of the bars just to further explain the pattern here. Let's look at expenditures, '84-'85. Expenditures are the bar all the way to the left of each of the three groupings.

[38] So, for Type I the bar has a height of approximately 3, so on the average for the 45 elementary schools in Type I the figure was 53—approximately 53 percent. This bar is slightly above that 50 percent level from the value of 3.

Let's move over to Type II now and look at that same variable, expenditures '84-85. That bar is now in a negative direction from the middle-most point with a negative 5.

When you move over to Type III, looking at expenditures per pupil, that bar is now down perhaps at a minus 6.

So, as you can see, when we look at the graph in this fashion, the Type II and Type III schools are underrepresented with expenditures per pupil, and on the average the Type I schools are overrepresented. You can go through and look at each of the variables in this fashion to see if there's under- or overrepresentation.

Q. So essentially what you are doing is saying deviation from the average of the three types?

A. That's right.

Q. That's what that zero line is?

A. It's deviation for the average of all schools broken out by type of school.

Q. Okay.

So, we could go through each of these bars, and we would be essentially saying the same thing in terms of how to [39] read them—

A. That's correct.

Q. —for each of those variables?

A. That's correct.

Q. Now switch to high schools.

A. Sure.

Q. Let me show you what has been marked in a smaller version as Plaintiffs' Exhibit 114, and tell us what we are looking at there, Doctor Cole.

A. This is a similar kind of summary graph, and now it is done for high schools. We have fewer measures for high schools.

Q. Why is that?

A. Well, for example, we do not have the grade seven level of failure. There are just fewer variables that were available for analysis.

Q. Okay.

And what are we looking at there?

A. We're looking at teacher experience, teacher turnover, teacher education, student retentions, and the California Achievement Tests.

Once, again, these variables are standardized, and we see that for Type I schools, on the average they have teachers with more experience, they have less turnover, the direction of that variable is switched, they have teachers [40] with more education, they have fewer student retentions, again that variable direction is switched, and on the average their students score higher on the California Achievement Test.

Q. You did the same kinds of calculations to show deviations from the average, is that right?

A. That's correct.

Q. So, the same way of looking at 113 will work for 114?

A. That's right.

We looked at 22 schools, first found out what the averages were, and then broke them out by type.

Q. Did you look at some of these variables any other way than by type, Doctor Cole?

A. I did.

Q. And what did you do generally?

A. For some—for some of the variables we broke them out by individual school. We can look at individual averages.

Q. And which schools did you look at?

A. Looked at schools that in 1986 were zero to 25 percent black and also schools in 1986 that were 75 to 100 percent black.

Q. And why did you do that, Doctor Cole?

A. It was suggested to me by counsel that the court thought it might be helpful.

Q. Let me show you what has been marked as Plaintiffs' Exhibit 128. Can you tell me what we are looking at there, [41] Doctor Cole?

A. This is a chart that is labeled "Teacher Turnover and Level of Educational Attainment." It's got two groups of schools defined by percentage black students. The first group is zero to 25 percent black, and the second group is 75 to 100 percent black. These are elementary schools. There are three variables columned after the school name: Teacher Turnover for '84-'85, Teacher Turnover for '85-'86, and Percent Graduate Degrees for '86-'87.

Q. Are you using the same data base as for the typologies for each of these variables?

A. I am.

Q. So these are simply breakouts by individual school, is that right?

A. That's right.

Q. And do you show anything other than the value for the individual school?

A. There is a row at the end of each grouping of schools labled "Mean" which is simply the average for the schools in the category.

Q. And have you compared the statistical significance of the differences of those means?

A. I have.

For example, the schools that had zero to 25 percent black students on the average had 10 percent teacher turnover, [42] whereas the schools that were 75 to 100 percent black in 1986 had 22.9 percent teacher turnover.

Q. And what is the statistical significance of those differences?

A. They are statistically significant.

I compared the means for each of the two groups of schools for each of the other variables, and they were statistically significant as well.

Q. Okay.

Let me show you what has been marked Plaintiffs' Exhibit 129 and ask you what that is?

A. These are—this is an exhibit that is for the DeKalb high schools that in 1986 were zero to 25 percent black or 75 to 100 percent black.

Q. So it's essentially the same exhibit except for high schools that we just discussed, is that right?

A. That's correct.

Q. And what are the mean differences for zero to 25 and 75 to 100 for each of those categories?

A. For eacher turnover, '84-'85, the percent for the zero to 25 percent black students schools is 18.3, and for the largely black schools, 75 to 100 percent, the mean is 30.2 percent turnover. Those means significantly differ from one another.

For a turnover in '85-86, the figure is 12.1 [43] percent for the zero to 25 percent black schools, and it's twice that amount for the 75 to 100 percent black schools at 24.0 percent.

When you look at percent graduate degrees in '86-'87, the zero to 25 percent schools, 76.5 percent of the teachers have graduate degrees, and for the 75 to 100 percent schools 62.9 percent have graduate degrees. All those differences are significant, statistically significant.

Q. Let me show you what has been marked as Plaintiffs' Exhibit 130. Can you tell us what we are looking at there, Doctor Cole?

A. This is a similar kind of breakout where we are looking at schools that are zero to 25 percent black in '86-'87 as compared to schools that are 75 to 100 percent black.

Q. And what are the variables we are looking at there?

A. The variables are percentage of teachers with less than one year experience, percentage of teachers with less than three years experience, and the average number of years teaching.

Q. And, again, I take it we show it by individual school and by average?

A. Yes, we do.

Q. And what was the source of this exhibit?

A. The school system tape—teacher tapes, classroom teacher data, 1986.

[44] MS. WILDE: Again, Your Honor, that's the tape to which we have stipulated the accuracy.

BY MS. WILDE:

Q. Can you tell us what the average comes out to on each of those for zero to 25 and 75 to 100?

A. Okay, for the variable percent teachers with less than one year experience, on the average the zero to 25 percent schools have 13.4 percent. For the 75 to 100 percent schools the percentage teachers with less than one year experience on the average is 25.1 percent.

Q. How about less than three years experience teaching?

A. The zero to 25 percent schools, 17.4 percent, and for the 75 to 100 percent schools the figure is 45.1 percent.

Q. Nearly three times higher, is that right?

A. That's correct.

Q. How about average number of years teaching?

A. For the zero to 25 percent schools it's 9.9, and for the 75 to 100 percent black schools the figure is 5.4.

Q. Again, did we do this at the high school level, Doctor Cole?

A. We did.

I should add that these means are all statistically significant to one another.

Q. Let me show you Plaintiffs' Exhibit 131. Can you tell us what that is?

[45] A. This is the same kind of breakout, but we are now looking at high schools.

Q. And what kinds of differences are we getting there, Doctor Cole?

A. For the percentage of teachers with less than one year experience, for schools that have zero to 25 percent black students the figure is 10.2 percent. For the schools with 75 to 100 percent black students the figure is 28.2 percent.

Q. Again, nearly three times higher, is that right?

A. That's correct.

Q. How about less than three years experience?

A. The zero to 25 percent schools we have the figure 25.2 percent and for the 75 to 100 percent schools we have the figure of 45.7 percent.

Q. And, again, average years teaching?

A. 8.7 years on the average for the zero to 25 percent schools and 5.5 percent for the zero to hundred percent schools—I'm sorry, 75 to 100 percent schools.

Q. And, again, have you run a test on the statistical significance?

A. Yes.

Q. Are those two different from each other?

A. For each of the variables, the two groups are statistically significant from one another.

Q. Briefly, did you look at any other variable other than [46] the ones we have talked about?

A. I did, I did.

Q. And what was that variable?

A. Number of advanced placement courses in high schools.

Q. And how many schools were you able to look at?

A. Looked at six schools.

Q. And why were there only six?

A. There was a large amount of collating to be done, lot of handwork to be done. Six schools were chosen, two from each of the three types of schools.

Q. Were you involved in that choice, Doctor Cole?

A. I was not.

Q. Did you look at those six schools?

A. I did.

Q. And what was the—what was it that you were looking for?

A. I was looking for the number of advanced placement courses that students had an opportunity to take.

Q. And what were the figures?

First of all, how were they broken out?

A. First of all, I looked at these figures in 1986-87.

Q. Okay.

A. They are broken out by type of school, and there are two schools in each type.

Q. Okay.

[47] A. So Type I, the two schools that I have information on are Chamblee High School, which had 11 courses offered, and for Dunwoody there were 26 courses offered. These are advanced placement courses.

Q. How about Type II?

A. Type II schools, we have got Cedar Grove which had five courses offered, and for Southwest DeKalb High School you had seven courses offered.

Q. And Type III schools?

A. And the Type III schools we have got Gordon which had three advanced placement courses offered, and for Walker there were five advanced placement courses offered.

MS. WILDE: Your Honor, at this point we are going to switch from just the typologies to correlations. Is this an appropriate place to take a break?

THE COURT: We will take the morning recess, then. We will recess for 15 minutes.

(Recess)

STEVEN PARKER COLE

having returned to the stand, testified further as follows:

DIRECT EXAMINATION (Cont'd)

BY MS. WILDE:

Q. Briefly, before we leave, Singleton, I would like you to take a look at Plaintiffs' Exhibit 123(A), (B), (C), and (D), [48] and ask you if you can identify those and tell me what those are?

A. These are tables labeled "Percentage of Black Teachers Assigned to DeKalb County Elementary

Schools," and there are three columns of data, 1984, '85, '86, and they are broken out by individual school.

Q. And what is the source of that data?

A. The source of these data are the—these are the teacher tapes.

Q. For each of years?

A. For each of the years, school system teacher tapes supplied to me.

Q. Okay.

And what have we got for 123(B)?

A. These are the percentage of black teachers assigned to DeKalb County high schools, '84-'85, '85-'86, '86-'87.

Q. These are just individual school breakouts of the information we are using today?

A. That's correct.

Q. How about 123(C) and (D)?

A. This is a summary of the Singleton indices by type of school for elementary and high schools.

Q. Are these the numbers we we saw on those charts?

A. We saw the deviations on the chart, but these are the numbers from which the deviations were drawn.

[49] Q. This is using one as an absolute, one rather than zero, which appeared on the chart?

A. That's correct.

Q. Thank you.

Okay, we have talked about the various comparisons by type. What did you do next?

A. I then looked at the relationship between pairs of variables.

Q. How did you do that?

A. One way to do that is to run correlations.

Q. What's a correlation, Doctor Cole?

A. A correlation index is the degree to which a statistical relationship exists between two measures.

Q. And how do the numbers run on that?

A. They run from a plus one to a minus one.

I should add that a correlation indicates the degree to which variation occurs in one variable and how that

change or variation relates to another variable. You can look at the magnitude of the relationship, and you can also look at the direction of the relationship. So, the lowest value correlation coefficient one can take is a minus one.

Q. And what would that tell you?

A. That would indicate a perfect inverse relationship between the two variables, that is, as one variable is increasing the other is decreasing. A value of zero would [50] represent a zero correlation and indicate that the two measures are unrelated to one another, and the plus one value indicates that the two variables were perfectly positively related to one another, that is, as one of the variables increase, invariably the other variable increases.

Q. And what did you run these correlations on?

A. I did them in a number of ways. I ran them separately for high school and elementary. Initially, I ran the correlations by typology and treatment.

Q. Okay.

Let me show you what have been marked Plaintiffs' Exhibits 89 and 90—let me take that back—88 and 89 and ask if you can just identify what those are?

A. These are the printouts from the actual correlational runs, computer runs.

Q. And what is the difference between these two?

A. One is for elementary, and one is for high school.

Q. Doctor Cole, let me show you what has been marked as Plaintiffs' Exhibit 115 and ask you if you can tell us what that is?

A. All right, this is a correlation matrix labeled "Pearson Correlations Between of Student Racial Composition."

Q. And what are you doing there?

A. What I'm doing there is looking at ten different indexes of racial composition.

[51] Q. And are these the same that we discussed earlier when we were talking about the typology and other measures, Doctor Cole?

A. It is.

Q. How does one read that? What do we do to make sense out of this chart?

A. It's a matrix. It's a matrix of numbers.

You look at the descriptions of the variables in the column to your left. Those represent the measures of racial composition. You have got percent black students in '84, percent of black students in '85, and on down the line for ten variables.

Q. Can you tell us what those ten are just so we are all on the same wave length?

A. We have got three measures of percent black students for 1984, '85 and '86. Then we have three measures that are defined as the average percent black students over a period of time. One of those is from '76 to 1984, another one is from 1976 to 1985, and the third one of those is from 1976 to 1986.

Q. What other measures do we see?

A. We see the Type school.

Q. Is that the typology we have been talking about?

A. It is. That particular variable has one of three values: one, two or three.

Q. And what are those other, eight, nine and ten there?

[52] A. Those are indexes of racial exposure for 1984, 1985 and 1986.

Q. Okay.

Now what—how do we read it across the top?

A. Across the top we've got the numbers 2, 3, 4, 5, 6, 7, 8, 9, 10. Those numbers refer to the labels on the columns. So in number 2, in that row of information really is percent black students '85. It was just columned this way because there wasn't really enough room to do it. So, that 2 represents percent black students '85.

The column next to that labeled 3 is really percent black students '86.

So, you can refer to the numbers all the way to the left to figure out what the column headings are at the top of the page.

Q. And then what do these numbers that we see in the matrix tell us?

A. These are actually the Pearson Correlation Coefficients. They tell us how pairs of variables relate to one another.

Q. Can you take an example and explain what a number might mean?

A. Sure.

Let's look at the number in the upper left-hand portion of this matrix under the 2 and on the same row as percent black students '84, that's a number 99. The [53] correlation coefficient of .99.

You would expect a high correlation there between percent black students in 1984 and percent black students in 1985. That's all that number represents.

Q. And what, for example, would it tell us, type school which is 7—well, I meant to do it across the top—number 3. percent black students, 1986, you go over to column 7, which is type school, you get a 91 there. What does that tell you?

A. It means there's a correlation between type school and percent black students '86 of .91. It's a rather high correlation, and because we are looking at 73 schools here you need a correlation of .23 to be statistically significant.

So, all the correlations in this matrix are significantly statistically significant.

Q. At what level?

A. Certainly less than .05.

Q. Okay.

And what essentially, in summary, does this correlation matrix tell us?

A. It tells—it tells the researcher that there's a high degree of relationship between all these variables, that the typology is very closely related to the number of the —the percentage of black students in a particular year. It is very closely related, for example, to the average percentage black [54] students over a period of time.

Q. Is this what you meant earlier when you talked about testing the typology, Doctor Cole?

A. It is; it is. It demonstrates the validity of the typology breakout.

Q. Let me show you Plaintiffs' Exhibit 119. What is that?

A. That's a similar matrix now done for high schools.

Q. And I take it we have the same measures of racial composition, is that right?

A. That's correct.

Q. And what would be the level for significance, for the numbers to be significant there?

A. Because of the level of significance, the criterion will change with the numbers of cases in your study. Because we have 22 schools in this analysis, the correlation coefficient that you would need to be statistically significant is now .43.

Q. And these are all in excess of .43, is that correct?

A. That's correct.

Q. So these are all statistically significant?

A. Highly.

Q. Thank you.

Now let me show you what has been marked as Plaintiffs' Exhibit 117 and ask you if you can tell us something about that. Have you got it there?

[55] A. Yes.

Q. Very good.

What is that, Doctor Cole?

A. Once, again, we have another correlation matrix, and this matrix is between the treatment and achievement characteristics, which are your rows here, and we see how these particular variables are related to measures of student racial composition, which are the columns.

Q. Can you pick an example and explain to us what we are looking at, Doctor Cole?

A. Sure. Let's look at the number in the first row, first column, under Percent Black Students '84, and see how that relates to the number of books in 1984. That

correlation coefficient is a minus .43. The negative direction of the correlation means that as the direction of one of the variables increases the direction of the other variable decreases.

So, as the percent black students in the school increases, the number of books available to them decreases, and this is a statistically significant finding. You need a correlation coefficient of .23 on this table to be statistically significant.

Q. And are all these coefficients above .23, Doctor?

A. They are.

Q. Basically what kinds of statistical conclusions can you [56] draw from this chart?

A. Well, in general, each of the five measures were statistically associated with treatment outcome measures. I would conclude from this the more black students enrolled in elementary school the more that school—I will just go through them—relatively deprived of library books, years of teaching in its teaching staff, graduate studies by its teachers, and teaching continuity as measured by turnover.

Q. Okay, let's take a look at 121. What does that show you, Doctor?

A. This is a similar matrix. We don't have all the variables that we have for the elementary schools, but as the columns we have some measures of racial composition, and as the rows we have measures of treatment and achievement characteristics.

Q. And this is for high schools, is that right?

A. That's correct.

Q. Again, can you pick a number and explain to us what that means, how to interpret that chart?

A. Okay, I'm going to—the majority of these numbers are statistically significant. There are some on here that are not.

Q. And what is the level at which they become significant?

A. Correlation of .43.

Q. So, anything below .43 is not statistically significant, [57] is that correct?

A. That's correct.

Q. Okay.

Go ahead.

A. So let's pick a number from the first column, once, again, Percent Black Students, '84, and let's compare that to the average number of years of teaching experience in DaKalb County in 1984. That correlation is a minus .46, so that as the percent black students of a particular kind of high school increases, it is associated with teachers with less teaching experience.

Q. And what do you mean by "associated," Doctor?

A. Well, in this particular situation it is a statistically significant relationship.

Q. Meaning you find high school—meaning there is—well, why don't you explain what that would mean in terms of those two variables?

A. It would mean that an increase in percentage of black students is associated or is related to a decrease in the number of years experience of the teaching staff.

Q. In a way that is not random, is that right?

A. That's right. It is not happening by chance.

Q. And is that what the "P" value tells us?

A. It does.

Q. Let's go to one other set of correlations.

[58] Could you please take a look at Plaintiffs' Exhibit 116 and tell us what that is and why you did it?

A. We have, yet again, another correlation matrix here. This one is between treatment and achievement characteristics and we do not in this matrix have any of the racial composition measures.

Q. Why was this run?

A. This was run to look at the level of intercorrelation amongst these treatment and achievement characteristics.

Q. And why is that important?

A. Well, for one thing, when you want to do a further kind of statistical analysis called regression, you want to

make sure that the intercorrelation amongst those variables is not extremely high, so this is one way of checking for that, is to do a matrix like this.

As you can see, the only time you see extremely high correlations is when a variable like years teaching 1984, as compared to years teaching 1985, it's a correlation coefficient of .97. You are basically measuring the same thing.

Q. Okay.

And did you do this again for high school, run a check as to whether or not you had high interrelations?

A. I did.

Q. And that 119? No, it is not.

[59] A. No. You scared me.

Q. Let's try 120, perhaps.

A. Yes.

Q. And, again, can you briefly show us—tell us what we are seeing there?

A. You see a moderate range of correlation amongst these achievement and treatment characteristics. The only really extremely high correlations are amongst the variables measuring essentially the same thing from year to year.

Q. And did you draw any conclusions as a result of these two correlation matrices?

A. I did.

I believe from these correlations that amongst the independent variables that I would put into a regression model we would not have an extreme level of statistical relationship, but there's also a wide range of correlation amongst these other variables which means we are not really measuring the same things. We are measuring aspects of treatment and achievement, but we are not measuring exactly the same thing.

Q. With any one or—with any two variables?

A. That's correct.

Q. Okay.

Did you do any other kinds of analyses, Doctor Cole?

A. I did.

[60] Q. And what were those?

A. I did what I have been alluding to, I did some regression analyses.

Q. What is a regression analysis?

A. Well, regression analysis is a statistical technique that relates the number of independent or predictor variables to some—excuse me—some other variable that you would like to try to predict.

Q. And how does that differ, for example, from a correlation?

A. Well, correlation is exploring—excuse me—let's try it again. Correlation—

THE COURT: Do you need a recess?

THE WITNESS: I will try it one more time.

A. —correlation between two variables alone.

A regression, you have one variable that you are trying to predict, and in a multiple regression situation two or more variables that you try to relate to one another and see how it relates to that predictor or outcome measure.

Q. And in these what did you use as the dependent variable?

A. In these—this set of analyses, the depender outcome measures were measures of racial composition of the schools.

Q. Why was that?

A. Was trying to see if there was a relationship between treatment and outcome measures and the racial composition of [61] the schools.

Q. And what independent variables did you use in these regression analyses?

A. Used variables like number of books per student, years of teaching, teacher turnover—

Q. Essentially the same—

A. —graduate degrees. Essentially the same variables we have been looking at on a one-by-one basis in these bar charts.

Q. Okay.

Let's take a look at Exhibit 118 and can you tell us what that means?

First of all, what is that?

A. 118 is a summary sheet of variables that were significant and related to the measures of racial composition.

Q. Okay.

And can you tell us what each of those headings mean?

A. We have got the racial composition variable. We've got regressed step-wise on. These are the variables that were significantly related to the racial composition variable. And we heave got a column labeled "Adjusted R" and "Multiple R" and "Adjusted R Squared."

Q. What do these tell us, Doctor Cole?

A. Well, the multiple regression correlation coefficient, [62] the multiple "R" the is the correlation coefficient between the actual values of the measure you are trying to predict and the values predicted by this combination of independent variables, here the treatment characteristics, and the values of the multiple regression coefficients range from zero, which is no correlation, to one, which is a perfect correlation. The "R" squared is the proportion of variation accounted for explained by the variables that are in the regression equation. And "R" squared ranges from zero, which means no explained variation, to one, which is all variation explained.

Q. So, for example, if you have in that first line, by the time you finish the regression you have a .80, you are explaining 80 percent of the variation in the data?

Have I got that right? Is that what we are doing, Doctor Cole?

A. If at the end of the regression, step-wise regression, you have an "R" square of .80, that means 80 percent of the variability in the racial composition of that school can be explained by those variables.

Q. So, will you take us through any one of those examples and explain how that works?

A. Okay. I think it would be best if we went to a—

Q. To a regression itself?
A. —a specific regression.
Q. I should have had you identify 90 and 91. What are [63] those?
A. These are the computer outputs from multiple regression runs using the statistical package for the social sciences.
Q. And why are there two?
A. One for elementary schools, and one for high schools.
Q. Thank you.
Let's just take a look, just so we understand, this is Exhibit 90, and I believe you have got it turned to page 38, is that right?
A. That's correct.
Q. Okay.
Tell us what we are looking at there?
A. Okay, in this particular analysis—
THE COURT: Excuse me. What was the page number?
THE WITNESS: Page 38.
MS WILDE: Of Exhibit 90.
MR. SAMS: Is this high school or elementary?
THE WITNESS: Elementary.

BY MS. WILDE:

Q. Okay, go ahead.
A. On several lines down we see the description "Dependent Variable", and you see a variable called "AVEPB-85" and a label "Average Percent Black Students," this is the average percent black students in the years 1976 to 1985.
Q. That's one of your racial composition measures?
[64] A. That's one of the composition measures, and in this situation we are going to see if a number of treatment and achievement variables are related together to the racial composition of the school as measured by average percent black students.

MR. WEATHERLY: Excuse me, what page was that?
THE WITNESS: 38.
MS. WILDE: 38.
MR. WEATHERLY: On the elementary run?
MS. WILDE: Yes.

BY MS. WILDE:

Q. Okay, proceed, please.
A. Okay, we've got a label there beginning block number one, method step-wise, and what this technique does, it takes each variable in a step-wise fashion, and we let the computer program decide which variables go into the model or not. I'm not going to force anything into the model. I'm going to allow the program to evaluate the interrelationship amongst the treatment and achievement variables and see which ones will predict racial composition.
Q. Okay, and what do we find?
A. The first available under the model is years teaching 1985. It's got a multiple "R" of .77 and a "R" square of .60. 60 percent of the variability of the racial composition of the elementary schools as measured by average percent black [65] students can be accounted for by the numbers of years teaching of the teachers.
Q. Does anything else go into that model?
A. The next variable, then, is percentage reading failures.
Q. And that's on page 39, is that right?
A. That's correct.
Next available, then, is pupils per staff member.
Q. And that's page 40, one page per regression or per step?
A. Per step.
Q. One page per step. Okay.
And when we get to step number 3, which is pupils per staff member, '85-'86, is that right—
A. That's right.

Q. —how much variability have we got explained at that point?

A. At this po'nt we are up to .69.

Q. Okay.

Does anything else go into that?

A. In the final step we have step staff salary per pupil.

Q. All right.

A. And "R" square now is rounded off at .73. The 73 percent of the variability in the racial composition of that school is accounted for by the years—the number of years that the teachers have under their belt, the staff salary per pupil, percentage reading failures, and pupils per staff member.

[66] Q. Okay.

A. The way you can evaluate the significance of it is at the very end of the model you've got some probability values associated with each of the variables. If they are under .05, they are statistically significant.

Q. Okay.

Let's go back to 118 in light of that, and can you explain, in light of what we have just gone through, what we are seeing here?

A. Back to Exhibit 118, if we step through each of the racial composition variables, I will read off which variab'es relate significantly to the racial composition measures. Per-percent black students in '84 it's the California Achievement Test, and years teaching in 1984.

Q. And those are the two that predict best percent black students, is that right?

A. That's correct.

Q. Okay.

A. The average percentage black students in '84, we have got historical perspective in this particular variable with the same two measures predict the racial composi-

tion of the school as measured by that variable, California Achievement Test '84 and years teaching '84.

You get the same pattern for the typology we have been using. California Achievement Test in '84 and years [67] teaching in '84.

Same pattern maintains for the Racial Exposure Index.

When you move to 1985 and you use the percent black students variable, you now have years teaching in 1985 and the percentage reading failures best predicting black students, percentage black students in a school.

In 1985, this is a review of the exhibit we just went through, the average percent black students by years teaching, pupil-to-staff ratio and salary of teacher.

We look at the racial exposure index for 1985. The variables that significantly predict it are years teaching and percentage reading failures.

Q. Let's take a look at 122. Can you tell us what that is?

A. This is a similar kind of chart, but now we are dealing with the 22 high schools.

Q. Okay.

So, we would read this in the same way?

A. You would.

Q. All right.

What conclusions do you draw statistically at least from these regression analyses?

A. Well, for the elementary schools, the student racial composition can be significantly predicted by a combination of treatment and achievement characteristics. Similarly for the [68] high school. The high school pattern isn't as tight, but the findings are essentially the same.

Q. Okay.

Let's switch, Doctor Cole, to achievement. Did you do any anlyses of achievement?

A. I did.

Q. What did you do?

A. I looked at the individual achievement of DeKalb students as measured by the California Achievement Test

in the Fall of 1984. I broke it out by race, the racial categories being black students and white students, and white students, that category including all non-black students.

Q. Okay.

A. I did the analysis by controlling for, using the statistical technique, controlling for socio-economic status as measured by free and reduced lunch.

Q. Okay.

Why did you do this analysis?

A. To demonstrate the persistence of racial gap in achievement regardless of socio-economic status.

Q. What was your working hypothesis?

A. The working hypothesis was that there be a high correlation between race and achievement and socio-economic status and race, but the relationship between race and achievement would still be maintained even though we [69] controlled for the role of S.E.S., or socio-economic status.

Q. Was that hypothesis borne out?

A. It was.

Q. Let me show you Plaintiffs' Exhibits 124(a), (b) and (c) and have you identify those for me, Doctor Cole.

What is 124(a)?

A. 124(a) is the printout, a series of analyses of covariants using the statistical package B.M.D.P.

Q. Is that essentially the data you ran on this study or the models—what is this?

A. These are the results of the analysis.

Q. Thank you.

What is 124(b)?

A. 124(b)—

MS. WILDE: You don't have that, I don't believe.

A. —is a graphical presentation of the total California Achievement Test course before we introduced the factor of socio-economic status.

Q. I will just switch copies so I can give the marked exhibit to the judge.

And how is that done?

A. Let me spend a little more time with this exhibit.

As I said, the California Achievement Test, or the CAT, the Fall of 1984 and this particular graph breaks out the average N.C.E. score, normal curve equivalent, by race and by [70] grade. So, if we look all the way to the left we see two bars over the number "2" meaning grade two. The black bar represents the black students, and the white bar represents the white students. The actual numbers are not on this chart, but they are in the output, the statistical output. I will make some rough judgments from the bar in describing this.

So in grade two we see that on the average for all these students, all the black students who took the California Achievement Test in grade two, the average is about 48, and on the average for whites it's about 62, 63, and we see a similar pattern for grades three, four, five and six. There's a little bit of a—little bit of increase in the gap in grade nine, but essentially for grades two, three four, five, six, and seven, and grade nine there's a significant gap in achievement between blacks and whites as measured by the California Achievement Test.

Q. Okay.

Let me show you what has been marked as Plaintiffs' Exhibit 124(c), and ask you if you can tell us what that is?

A. This is a graph, another bar graph, describing the results of the California Achievement Test in the Fall of 1984. These are total battery scores, the reading and math combined, just as in the previous chart, and they are broken out by race and grade.

The difference between this chart and the previous [71] one is that these averages, these means are controlled for free and reduced lunch.

So, for example, if you compare—if you compare this graph to the previous one, the gaps are not as large.

When grade two, for example, is adjusted for socio-economic status as measured by free and reduced lunch, the mean now is about, a little over 50 for the blacks. Before it was like 48. The white mean is what lower. It is down do about 60 as opposed to maybe 63 before. This same sort of adjustment for the relationship between S.E.S. and achievement is done for grades two, three, four, five, six, seven, and nine.

Q. And what pattern does that show?

A. It shows a consistent achievement gap across these years and across these grades in 1984, and these adjusted values, adjusted for the effects of S.E.S., these are statistically significant at each grade.

Q. Doctor Cole, what conclusions do you draw from your study as shown by these two graphs?

A. I would state that the black gap in achievement, the racial gap in achievement, persists over time regardless of socio-economic status.

Q. And what does that indicate to you?

A. It indicates to me that there is a need here for black students—that black students have additional needs.

[72] MR. WEATHERLY: Your Honor, I object. I'm not sure that the response that the witness appears to be giving is within his field of expertise. We are not objecting to him being qualified as an expert on statistics, but he appears to be extending his opinions to the needs of black students in DeKalb County, and I don't believe there has been any indication made of his qualifications to do so.

MS. WILDE: Your Honor, I can have him—

THE COURT: Are you going to cross-examine this witness?

MR. WEATHERLY: Yes, sir.

MS. WILDE: Your Honor, I'm happy to have him talk in term of gaps, which, indeed, a statistical measure that he is qualified to do. That would probably be the simplest way to do it.

THE COURT: All right.

BY MS. WILDE:

Q. Indeed, what does the pattern show you in terms of the gap between blacks and whites?

A. There's a persistent gap, a gap that is not being addressed by the school system.

Q. And you come to that conclusion in what manner?

A. By the viewing this information in grades two through seven and nine, a gap demonstrated regardless of the grade measured.

[73] Q. Okay.

Let me show you what earlier was marked as Defendants' Exhibit 117. I believe you were here during the testimony of Doctor McMillan. Do you remember this chart?

A. I do.

MR. SAMS: What number?

MS. WILDE: Defendants' 117.

BY MS. WILDE:

Q. What conclusions, if any, do you draw from this concerning S.E.S. and race and achievement, Doctor Cole?

A. Well, first, this now is a bar graph, again. You've got a bar for—you have two bars for blacks and two bars for whites. We are measuring percentiles here on the March, 1987, Iowa Test of Basic Skills, and the graph is also labeled "Free and Reduced Lunch Program."

We see that the black students, there's a gap between those on free and reduced lunch and those who are not. Students who are not in the program tend to do better.

You see a similar pattern for the whites. Students not in the free and reduced program tend to perform better on the I.T.B.S.

But I also see that both bars for the blacks are below both bars for the whites, that is, regardless of S.E.S., there is a gap between achievement between the blacks and white students as measured by the I.T.B.S.

[74] Q. Let's switch one more time.

You were present, I take it, during the testimony of Doctor Walberg, were you not?

A. I was.

Q. And one of the things we had done was take a look at his correlations, and I believe we were using Defendants' Exhibit 90. Do you have that here with you?

A. Yes.

Q. I believe I was questioning him concerning a line on this—on these correlations, and I would like for you to take a look and go through the same line and explain to me what it is we are seeing here.

First of all, what are we looking at?

MR. WEATHERLY: What page and what line?

THE WITNESS: Page 9. We are looking at the second line labeled P.O.S.

Q. What is that?

A. That's the post-test on the I.T.B.S., and on this particular analysis it was in the Spring of 1986.

Q. Okay.

By the way, this is a correlation, is this not?

A. Yes.

Q. Is this one- or two-tailed?

A. It's labeled one-tailed.

Q. What is the appropriate test for the statistically [75] significance of a one-tailed analysis?

A. Let me answer your question this way.

Q. Okay.

A. The output from this program prints only one-tail significance levels. In the work that I have been doing and that Doctor Walberg testified to, we do work with two-tailed tests. Unfortunately, this particular program outputs one-tail significance levels.

So, all you really have to do, given a chart of one-tailed probabilities, in order to determine a two-tailed significance level is simply use the criteria of .10 instead of .05. That's translated into a two-tailed level of statistical significance of .05. You just have to read this table of .1 to get the same thing.

Q. Why don't we go across that line using the post-test and tell me, using the .1 what variables are statistically significant in that correlation.

A. You've got a significant correlation between the pre-test and post-test of .96. Significant relationship with—I should add that this particular analysis is solely on black students.

Q. Okay.

A. You've got a significant relationship with the percentage of black students on free lunch. It's a negative relationship, that is, the higher the percentage of students [76] on free lunch the worse the post-test scores are.

You get a similar pattern for the percentage of students on reduced lunch, similar pattern for the percentage of students in the schools that are black.

Q. Explain that. What does that one mean, for example?

A. That's a correlation coefficient of minus .407 indicating that the greater the number of black students in the school the lower the average achievement as measured by the post-test.

Q. Okay.

And what's the statistically significant level of that.

A. .000.

Q. And what is that? What does that tell you?

A. That tells me that this particular correlation coefficient, this particular pattern data is not happening by chance. It is certainly less than .05.

Q. Okay.

A. You would expect this particular finding to happen in less than one in a thousand chances.

Q. Okay.

Continue across at levels of statistically significance for those variables.

A. We have a proportion white students, and this is a positive significant correlation; the more white students

in [77] your school the better the average schools achievement test scores are.

We then have a variable labeled "B.T." or black teachers. That's a negative correlation with a "P" value of .059, which is, on a two-tailed test, given this output, is statistically significant. The higher the percentage of black teachers in the school the lower the average achievement results. You get the reverse finding for proportion of white teachers.

And then you get the turnover variable.

I want to clarify an issue that came out in your cross of Doctor Walberg. The Defendants in the case measure turnover differently than the Plaintiffs. Turnover by the Defendants is measured by percentage of teachers who return as opposed to percentage of teachers who leave for one reason or another.

So, this correlation is positive, .347. The greater the percentage of students returning—

Q. Teachers.

A. —teachers, the greater the percent of teachers returning the higher the achievement level as measured by the post-test.

We get a significant relationship between experience in the post-test. The higher the experience—the higher the teacher experience the better the students do on their [78] achievement. The more—the higher the percentage of teachers who have master's degrees the better the achievement levels. The more teachers with specialist degrees the better the achievement as measured by the spring I.T.B.S.

Then we get a number of—we get a number of transformed variables that Doctor Walberg created: black students squared, black teachers squared, and turnover squared. These all follow the similar pattern to the variables from which they were created.

Q. Can you just give us in summary form the list of the variables that are significantly related to the post-test going across that line?

A. The pre-test, percentage of black students on free lunch, percentage of black students on reduced lunch, percentage of black students, percentage of white students, percentage of black teachers, percentage of white teachers, teacher turnover, teacher experience, percentage of teachers with master's degrees, percentage of teachers with specialist degrees.

Q. All of those are significantly related to scores on the post-test, is that right?

A. That's correct.

Q. What do you do, vis-a-vis, Doctor Walberg—well, let's go back.

As an expert in the area of statistics, do you have [79] any criticism of the manner in which Doctor Walberg performed his regression analyses?

A. I do. There are a number.

Q. What are those?

A. One is the inclusion of these transformed variables into the regression model. These transformed variables correlate highly with the variables from which they were created. You get a situation called multi-cliniarity, and this situation occurs because you have two variables trying to predict another one that are so highly related to one another that they are virtually measuring the same thing. It causes the overall model to be unreliable. That's one criticism.

Another criticism is the particular technique in the step-wise progression that was used. As I indicated, the technique that I used was to allow the program itself to use statistical criteria to decide which variables go into the model first. The technique that Doctor Walberg used forces variables in in a prescribed order, and your results can change given the order in which variables are forced in. That's a second criticism.

A third criticism is the use of the pre-score in the model itself. The pre-test correlates with a correlation coefficient of .96 with the post-measure.

Q. And why—

A. It is very close to a perfect relationship. It is [80] virtually measuring the same thing. When you put a variable with such a high correlation in the model, with such a high relationship to the dependent variable, you give other variables very little chance to demonstrate their relationship to the post-test measure.

Q. Did you, indeed, do any analyses using the same data base that Doctor Walberg used?

A. I did.

Q. What did you do?

A. I simply—well, the first thing I did was to reproduce his regression results, putting into the model a whole host of these variables, and, when the pre-test is in the regression model, none of the other variables are statistically significant. When you have the "pre" in, the pre-test measure, it is the only variable that is related significantly to the post-test measure.

Q. Which is essentially what Doctor Walberg did?

A. That's true.

Q. Okay.

A. So I essentially replicated his findings.

Q. Did you do anything further?

A. I re-ran the same analysis, taking the pre-test out of the regression model.

Q. And what were your results?

Perhaps I should show you what has been marked as [81] Plaintiffs' Exhibit 132 and ask you what that is?

A. These are the results of the regression runs I have been describing, and it is titled "Walberg Study."

Q. And on what page do you find the results of your regression without putting the pre-test in?

A. The results are found on page 7.

Q. And what are those results?

A. With the pre-test out of the model, there are three variables that are statistically significant to the post-measure, using the same data.

Q. And what are those?

A. Percentage of black students on free lunch, number of black students—percentage of black students in the school, and percentage of black students on reduced lunch.

Q. So, percent black students in a school becomes a predictor of black achievement using Doctor Walberg's data?

A. That's correct.

Q. And, again, can you explain what that relationship means in English?

A. In English, once you take out the pre-test from the model, this pre-test which is so highly related to the post-test, you have three measures which predict achievement in the Spring of 1986. These are two measures of socio-economic status, percentage of black students on free and reduced lunch, and measure of racial composition.

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TESTIMONY OF ROBERT A. DENTLER

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[24] BY MS. WILDE: How did you conduct your review on that topic, Doctor?

A. Well, I asked the questions which I have learned from other cases I have worked on to ask. Namely, in terms of student assignments, setting apart all the other vital considerations, have students been assigned in such a way that the schools appear to be racially balanced, racially unidentifiable, have they achieved the goal of becoming just schools, in the words of the Supreme Court, and what has been the rate or pace of movement toward racial non-identifiability and racial balance over time.

Q. And what did that review tell you, Dr. Dentler?

A. Well first, there was abundant adequate student enrollment information. I had it going back to 1969 and coming forward. I had several different sources. I compared them. They were reasonably reliable in my opinion.

I found that black students constituted just under six percent of the total number of students in 1969 and that their proportion increased substantially after that until it reached 47 percent in 1986, so it jumped from nearly six percent in '69 to about 27 percent in 1976 to about twice that at the present time.

I found, however, that five of the six—that there were six virtually all black schools closed by court order in 1969. Those were not reopened. There's evidence [25] to indicate, contrary to other districts I have worked in, they weren't opened on the sly or maintained under some other label, so those disappeared. That was the first basic attack on extreme racial separation.

I also found that schools which had rising proportions of black students in 1969 continued that pattern and became virtually all black schools by 1976 or 1986.

One of the ways of doing this is to ask how many schools are racially imbalanced, for example, and how many of them became racially imbalanced over time.

One standard you can use is 20 percent above or below the systemwide average. If the average is six percent, 27 or 47 percent.

In 1986, I found that 67 of the 95 regular schools in DeKalb were racially imbalanced by this criteria, that 30 schools, 24 of them elementary and six high schools, had more than 20 percent more black students than the systemwide average. That these schools in turn housed nearly two-thirds or 62 percent of all the black students in the system.

Thirty-seven of the schools, 31 elementary and six high schools, had more than 20 percent of the white students beyond the systemwide average. These 37 schools housed 59 percent of all the white students in the county system.

Another way I have used of assessing this is what [26] I would call racial isolation. That is, how many schools have so few cross race students that we can say they are racially set apart.

Q. And what's the standard of racial isolation that you have been using?

A. Well, the same one that came up in the first regulations from the Office of Civil Rights in 1964 with the Civil Rights Act, 90 percent or more black or white students constitutes a racially isolated public school.

In the fall of 1986, there were 35 schools out of the 95 regular schools that were racially isolated in DeKalb. Eighteen of these were elementary schools and five were high schools.

Q. Are these white or black schools, Doctor?

A. Eighteen of the elementary and five of the high schools were more than 90 percent black, most of them pushing 98 percent.

Twenty-three schools housed half of the black students in the school system as a whole.

In other words, here's a system which is nearly half black in which the black students, however, are clustered in 23 of the 95 schools.

There were ten elementary and two high schools which were more than 90 percent white, and these housed 27 percent of the white students.

[27] Q. Did you look at the question of racial balance in any other way, Dr. Dentler?

A. Yes. In addition to the 20 percent above or below standard and the 90 percent, I also asked about racial identifiability, and this has to do with whether a school remained predominantly white or predominantly black over a long period of time.

Q. And what period of time did you use in this analysis?

A. I used—in looking at this, I used everything I had first. I tracked every school and its change grafted from 1969 to 1986.

Then I noticed that the important marker was about 1976. That is, some important demographic changes took place in the district around that time. First, by that time the effects of the court order had taken hold. The impact

of closing the six virtually all black schools had played itself out. The boundary changes and zoning rearrangements had been adjusted, and transportation provisions were in place.

At the same time, the tremendous impact of residential housing turnover in the part of the county closest to the City of Atlanta had taken place.

At the same time, the county population had grown. In other words, suburbanization had begun to complete itself, so that the system had gained nearly 10,000 students [28] between 1969 and 1976. After '76, it was to go into its decline in enrollment.

So my way of estimating identifiability was to use the period from 1976 to 1986 to ask about schools which had remained predominantly white over that period, and I call those Type 1 schools.

Schools that had changed from predominantly white to predominantly black I called Type 2 schools. They were in transition toward becoming majority black.

Then Type 3 were schools that had remained predominantly black throughout that decade. Now, most of those, I might add, were predominantly black in 1969 or verging on it.

Q. And when you used this standard of racial identifiability, what were your findings, Dr. Dentler?

A. I found that at the elementary level, 45 of the 73 regular elementary schools were Type 1. That is, majority white schools throughout the period, identifiably white schools. They hosted 58 percent of the elementary students in 1986 including 90 percent of all of the white students.

There were 14 elementary schools in Type 2. They enrolled 1500 approximately black students in 1976 and 7200 black students by 1986, a growth of nearly five times, 460 percent, which vastly exceeds the growth in black students districtwide during that decade which was 190 percent, so [29] the Type 2 schools, the transitional schools, were the ones that took the impact of

the increasing relocation of black households into DeKalb County.

The Type 1 schools remained identifiably distinctively white and performed the hosting function for white students.

There are 14 elementary schools in Type 3. They hosted 39 percent of all the black elementary students in 1986. The number of whites attending these schools dropped from nearly 1200 students in 1976 to 253 students in 1986.

By 1986 at the elementary level, Type 1 schools in the northern half of the district hosted nine out of every ten whites. Type 2 and 3 schools in the northern half of the district hosted three in every four black students.

Q. Is that northern or southern?

A. I'm sorry. Type 2 and 3 schools in the southern half of the district hosted three out of every four black students.

At the high school level, there are 14 Type 1 high schools. That is, out of 22 high schools in this large county system, 14 of them are majority white schools and have been so for more than a decade. They enrolled 69 percent of all the students and 91 percent of all the white students in the district as of 1986.

There are five high schools in my Type 2 [30] transitional group. These schools in 1986 hosted 35 percent of the black high school population or 4100 black students compared with about 900 students in 1976.

Twenty-seven percent of the black high school students are enrolled in Type 3. That is, the three nearly all black high schools.

By 1986, over 60 percent of the black high school students attended eight of the 22 high schools.

Q. What are your conclusions on student assignment and student segregation in DeKalb having looked at these various indicators, Dr. Dentler?

A. Well, by the criteria of student racial composition considered in terms of representativeness of the district

or racial balance, considered in terms of racial isolation or identifiability, then the DeKalb County School District is relatively extreme in its distributions by all three criteria.

This is against a backdrop of a beginning in 1969 where the assumption in the order is that the pockets of persisting racial isolation will be eliminated, mainly using the tool of school closings and changes in the student assignments and desegregation will then be maintained.

That is not what has occurred.

Q. How does this compare with what you found in other systems throughout the country in the course of your work, [31] Dr. Dentler?

A. Well, I calculated a number of indicators of that question. The best indicator used in research in this regard is the Index of Interracial Exposure. The next best is the Index of Dissimilarity. The next best is Racial Balance.

We have looked at all three in DeKalb, and I'm familiar with the index values for many other districts.

My concern is not with the research question here of the relative values compared to other districts but with the extent to which DeKalb has made progress in eliminating its historic duality, and my sense on that is that it has not.

Its index values on interracial exposure and dissimilarity are about average relative to other districts undergoing similar processes. There is nothing, nothing especially indicative there as far as I'm concerned.

But what is special is in my view that the black students remain concentrated in a comparative handful of the schools in the district and the white students remain concentrated in another set of schools.

Q. By the way, Dr. Dentler, is desegregation the same as integration? What are those terms about?

A. No. The idea in racial integration is that the status quo equality has been achieved. That is to say, that people [32] are relating to one another and transacting with one another without, not only in a color blind fashion but where no racial attributes affect the nature of the interaction, where with respect to that matter the persons are fully equal.

Desegregation does not in any respect go to that depth. Desegregation is a question, I would put it, of distributive justice, of equity. That is to say, have opportunities and resources been distributed in such a way that life chances, the chance to survive, the chance to grow, the chance to nourish, the chance to achieve individually to the level of one's capacities been fulfilled. Or has treatment remained unequal, treatment conditions remained unequal.

You can have a deeply unintegrated system within a thoroughly desegregated system, and if you had a thoroughly integrated system, it wouldn't matter very much what the racial composition of the student body or staff was.

Q. Which is the goal here?

A. The topic we are dealing with is desegregation. We are not dealing with integration which I see as a social and moral phenomenon entirely.

Q. Have you done any examination to determine how the racial transition in DeKalb County occurred?

A. Yes.

[33] Q. And can you explain to the court in your view what took place in DeKalb County between 1969 and 1986 demographically?

A. Yes. We had abundant materials on the population and enrollment of the county, thanks to the answers to the interrogatories from the DeKalb County Board.

It became apparent that the county board—it became apparent to me that they tracked this matter. They projected enrollments, they keep records on population changes.

So after 1969, DeKalb County changed demographically in two profound respects. First, it was undergoing very rapid suburanization, so the population for a few

years was increasing rapidly. A suburbanization that had begun during World War II was completing itself, maturing during the early 1970's. This was part of the metropolitanization of Atlanta, I suppose.

Second, the black households of Atlanta and other parts of the Deep South were moving into, had opportunities to locate into DeKalb County in substantial numbers, perhaps for the first time in the history of that county, so black households came in.

It appears to me unmistakable evidence from legal records and the like that there was selling and buying on what we would call a highly dynamic basis. Some people call [34] it blockbusting. Going on in 1968, 1969, '70, '71, '72 and '73. So white households were relocating, were selling property, their properties. So the black population multiplied very rapidly before 1976.

At the same time, the first generation, the first wave of women coming up out of the post war population were, especially among white households, making a decision not to have children. So that the number, the drop in the annual live births in the county among white families is precipitous, so you have—

Q. Why is that important to look at?

A. Well, it is a mistake—there are several phenomena taking place. One is suburbanization, which means there are work opportunities in the county. People don't just commute into Atlanta. There is new housing stock coming in. The black population is a separate important phenomenon in its own right.

Third is something profound taking place among whites households at this time. They are going from, let's say, four child typical suburban, four child family, to something between zero and one, and that's taking place rather precipitously. Begins in the late 1960's, peaks in the early 1970's.

It's not unique to DeKalb. Women didn't get together and decide to go childless in DeKalb only. It was [35] true in about four out of five states of the United States

in that era. Other women were deferring child bearing until the late 1970's.

Q. Why is that an important factor to look at in terms of population of schools?

A. Well, because two things were confronting the superintendent and the board of education in the county, not one. The two things were white enrollment declines which had to be responded to. That is to say, how do we retain the constituency we have had historically. How do we encourage people to remain in DeKalb. How do we encourage people to make use of the public schools for the children they are having.

Second, how do we get ready to host rising numbers of black households that are coming in.

The answers to those two questions are intertwined, and the answer to the first, how do we treat the fact that we are becoming a suburb, how do we relate to Atlanta intertwining as well.

So it's a mistake demographically to just think of change as consisting of large numbers of black households moving from Atlanta into the Terry Mill sector of DeKalb County. That's one thing taking place. There are two other things that are equally vital.

MS. WILDE: Your Honor, what do you want do about [36] a morning break?

THE COURT: I have been waiting for an opportunity to take it.

We will recess for 15 minutes.

(Recess at 11:12 o'clock, A.M.)

THE COURT: Resume.

BY MS. WILDE:

Q. Dr. Dentler, did you have an opportunity to review the kinds of things that the DeKalb County School

System did in response to this population shift we have been discussing?

A. Yes, I did.

Q. And can you give us a general idea as to the kinds of changes that were made by the district?

A. Well, yes. I got the sense that the central administration, the school system, knew what changes were taking place.

They projected the changes in racial composition of students and in enrollment changes. They mapped the location of the new households and the new students coming in. They anticipated adequately who was coming to the school system.

In other words, they knew ahead of time who was coming, and they had a method for planning in advance how do draw boundary lines, and they had a variety of actions such [37] as building additions to schools, closing a number of white schools, placing portable classrooms and adding some new schools in the increasingly black residential areas.

Q. How would you characterize DeKalb County's response to those demographic changes, Dr. Dentler?

A. Well, that the—the adjustments that were being made, and they were major adjustments after 1976, in my opinion, there were deep changes in population size and enrollment change and decline and so forth.

In responding to that, the desegregation priority was very low compared to the priority given to simply having places to host and serve the incoming population.

It was, in other words, a response which maintained the several different geographic parts of the district, which maintained some of the white schools, closed down some others when underutilization got too extreme, but never went to the question of how can these changes be employed to help retain white families and to host, welcome and include fully the new coming, incoming black families.

In other words, it was looked at as a set of deep demographic difficulties facing the district rather than a set of opportunities to complete the process of eliminating duality, so that school closings, boundary changes, the placing of portables were decisions made that kept the district somewhat up to date on what it needed to do to [38] handle declines in some areas and expansions in others but didn't consider desegregation as a policy opportunity, as something to affect every one of the decisions that come forward.

For example, instead of closing predominantly white schools, you might consider the opportunities they represent for desegregation.

Q. Dr. Dentler, Dr. Clark and Armor have testified at this hearing that any action taken by the system given the strength of these demographic waves wouldn't have had any serious effect.

Do you agree with that?

A. No, because I can't imagine a way in which you employ history to reach a conclusion that some forces were very strong and your ability to affect them was very weak.

I guess you could talk about the bursting of a dam that way. You could say, "Well, the dam really burst," and I guess you could conclude that it wasn't made thick enough or strong enough in the first place, but in this instance, I don't think you have any basis for deciding that.

I am saying instead that there were profound changes taking place demographically in the county. That's indisputable.

The question is whether those profound changes were incorporated in the planning, especially between 1976 [39] and 1981, and my examination of the record is that these were treated as difficulties, but they weren't seized upon proactively, that what was seized upon was the importance of preserving as much of the system from the past as possible.

Q. What do you mean by that?

A. Well, that things as they had been in 1970 after the closing of the virtually all black schools marked a kind of base line, the most important demographic moment in the recent history of the district. How do you preserve the virtually all white schools, for example, not necessarily as all white but just preserve their existence. Which ones can you sacrifice. Where—if we are going to have rapid transition, what are the ways it can be contained so that it doesn't permeate the district but concentrates on the area of immediate impact, the place where people are moving in.

So I don't see the use of a variety of tools that are employed, have been employed for 15 years elsewhere in the nation being picked up and employed here in order to turn powerful intervening forces into opportunities for racial inclusiveness and equalized treatment.

By the way, equalized treatment would help retain white children in the system, not drive them out. I'm not talking about the use of tools which would press more white families into Gwinnett County or into Rockdale, for example.

Q. And we will get to those desegregative strategies in [40] just a moment.

First, I would like to ask you, though, in your view, did the school system policy and practice in any way contribute to the level of student segregation and student assignment in your view?

A. Yes. That the—I have never worked with, planned in or studied a school district in which responses to rapid housing changes didn't affect the future of the system.

In other words, what you do about that housing change, the turnover, racial turnover, will determine how welcoming, how retentive, how viable, how reputable the district is and how well it serves the children.

Here it appears to have been treated as a tremendous challenge at a period of rapid change, confusion, uncertainty, but not until later in the 1980's is it stabilized,

and by that time the housing turnover is, as Dr. Clark indicated, the main event. That is, it wasn't accompanied by educational policy changes that were desegregative and encouraging.

I don't see that steps were taken that held or magnetized white households any more than they hosted or served black families in the period '76 to '81.

Q. What in your view is the role of racial identifiably, racially identifiable schools in housing decisions?

A. Well, there are uncomplicated reasons why people move, [41] and all we know about American housing is that one of the reasons people move into a particular location or move out of it has to do with the schooling opportunities available or reported on alleged as available for their children, so I don't—to me, there are complicated research problems associated with the interaction between the desegregation and housing, tremendous research difficulties in measurement here, but the practicality is you can affect land values.

The first district I worked in was one where we modified land values immediately within one year of introducing desegregation in White Plains, New York. The land values in the previously segregated localities went up, and realtors could tell you why.

Why did they go up? They went up because now you were driven around White Plains and the real estate agent said to you, when you asked the question, "so where are the black schools" or "where are the white schools," the realtor could say, "oh, we don't have any," and every neighborhood was in this respect the same.

So I don't see that—I couldn't find on the list of adaptations made or the moves taken occasions where closings or portable placements or renovations, other adaptations the system made quite diligently were made with a view toward improving the desegregative potential of the district, so I see these as tremendous opportunities missed.

[42] Q. Do you have any specific information on DeKalb County concerning the role of schools in housing decisions?

A. Well, I have gone over the question of whether the —I have looked at the data on the classified want ads.

Q. And what does that tell you?

A. And it tells me that advertisers of properties, of houses and apartments in DeKalb County will on occasion make explicit reference to the school in which the housing is located, the attendance area.

That's always in a positive frame of reference. There's always an advantage like having one and a half baths or two baths rather than one maybe.

Overwhelmingly when schools are mentioned, they are what I call Type 1 schools, the majority white schools, are presented and projected as a housing advantage.

So in that sense, the realtors here and the people who advertise to sell their own homes must know there's a connection between schooling and housing.

I don't know—I don't know that I have ever met anybody who didn't think there was a connection.

Q. I would like to shift and talk about what other strategies were available naturally to deal with the kind of demographic changes that DeKalb County found itself going through.

A. Yes. The events taking place in this school district [43] are not that different from events taking place in many other metropolitan area districts around the country. The responses that were being made by those districts are what is different.

So there are many desegregative tools that were being used between 1970 and 1985 in other districts, and there's a large kit of desegregative tools, many of which could have been taken out of the kit and put to work in my opinion in DeKalb, but they weren't.

Q. And what are some of those tools and where have they worked effectively?

A. Well, for instance, ideas about subdistricting. Subdistricting has been used throughout Ohio, Michigan, California, New York, Florida.

The move to county systems is a subdistricting response, and subdistricts within the counties in Florida have been desegregatively devised.

I don't see an approach here which asks how to break up a tendency for one part fo the county to be a high impact transition area, another part of the county to be in the school system predominantly black and another to be virtually all white.

Q. I'm not sure I understand the term "subdistricting."

A. Subdistricting means you could take a large county like this and break it into two, three, four, five subdistricts, [44] apart from attendance areas or zoning boundaries of the sort that they use in the district.

Each of those subdistricts can in itself be racially and numerically balanced with the others, and people can be assigned to schools within the subdistricts. You don't have to use the whole county just because it's there.

It is possible to make collaborative agreements with surrounding districts, to pool resources, to arrange for student and staff exchanges between cities and counties. These are commonplace now in St. Louis and in the plans that have just been approved and under implementation in Little Rock, Arkansas.

I saw materials in response to the interrogatories which made it appear that in DeKalb County, a child coming in from the Atlanta schools has been defined, at least in the answers, as disadvantaged prima facie, and yet I don't see the collaborative arrangement for exchange and co-equalization that are possible there without going to metropolitan remedies.

There are lots of forms of cooperation and collaboration that are feasible.

Mechanisms for ensuring that expenditures are equalized. If we have an increasing number of what I call

Type 2 schools, schools becoming increasingly black, [45] majority black, how can we make sure that per pupil expenditures are maintained equally across all the facilities during the period of rapid change.

The court order in 1969 specifically calls for programs that will eliminate the deprivation due to historic discrimination, so some of the expenditures we have for black children and youths have to be over and above.

In other words, I don't see that the tool of targeting dollars at minority learning opportunities has been employed or was employed in DeKalb over the period from 1970 to 1982.

Policy planning. The only occasion I could see when the Bi-racial Committee or other advisory groups got in the act of having an opportunity to advise the superintendent and the board was one occasion when there was Bi-racial Committee reports on desegregative actions that could be taken. That occurred, I don't know, some year like 1981.

I have not seen other evidence of community advisory mechanisms bearing on equalization of treatment.

In contrast, in Mobile County, Alabama, for example, we could put on the table seven such reports completed within the last four years by different committees, commission and the like.

There is one in the making not right now by [46] committees established there by the Chamber of Commerce.

Q. What other strategies were available?

A. Other desegregative tools that could have been used in the county and if you are not to include controlled choice, varieties of variations on the old freedom of choice motif, giving parents options for different schools they could attend. It's like a transfer scheme but a little more complicated and can be used desegregatively, has been used to increase desegregation in many districts.

Q. Let me make sure I understand. You are saying you would give the parents a list of schools to which they could send? Is that what you mean?

A. Yes. In other words, an annual opportunity for parents to apply to have their children attend a variety of schools. This is inherent in the minority to majority transfer program. That could be enlarged into greater freedom of choice, greater consumer choice, all of which could have been desegregative, all of which could have encouraged more cross race student exchange.

The clustering of schools, the use of schools at different grade levels, putting them together so that you figure out a feeder pattern from one school to another which is optimally desegregative.

Now, there are feeder pattern plans in the DeKalb system, but this was—these have not been devised for [47] desegregation purposes.

Q. How long has that concept been around, Doctor?

A. Well, clustering has been commonplace since the early 1960's and quite well understood and frequently used.

Magnet schools have been around for more than a decade. Magnet schools and magnet programs were in use from 1973 on in at least a dozen surrounding urban and suburban school districts in the south.

I don't see these were picked up on until recent years. Recently some magnet programs have been coming into being, but it would have been critical in 1976.

Q. Any other desegregative tools that were available to the county during that time frame?

A. I'm sorry?

Q. Are there any other tools which were available to the county during that time frame?

A. Yes. I don't see that there were urban to suburban exchange arrangements made, opportunities for white and black students alike to move between DeKalb and other counties or Atlanta proper.

I don't see that staff desegregation got very far beyond an affirmative action recruitment policy and a general distribution policy.

I don't see that there was staff development for a multicultural curriculum. I don't see that teachers were [48] taught how best to teach heterogenious groups of students, and yet teachers were having their classrooms change under them in the course of that period.

Another tool that is important, I don't see that decentralization of authority and decentralizaiton of operations came into play until the 1980's. The authority principals and other building administrators were not increased. This can contribute to desegregative options. There was no consideration of it as far as I can see on the desegregation planning record.

Educational equity. While there were program improvements introduced in the system after 1980, educational equity was, has not, and the tools under it have not been used in the county. These include, for example, programs explicitly designed to enhance the learning of black children and youths.

I don't see that the effective schools reform package was adopted here until 1982-1983, thereafter, until Dr. Freeman showed up, and yet they were available well before that time.

I don't see that early childhood education centers which are very important as compensatory offsettings to the ravages of discrimination were introduced. Those could have been of value to white parents as well.

I don't see that programs to welcome and assist [49] transfer students were introduced. The M-to-M program got off the ground in 1977, but methods of hosting students and welcoming them didn't follow on until 1983, '84, '85.

Transportation. There are transportation provisions in the system. I didn't see that these had been exploited for desegregation purposes. I don't mean busing, per se, but among the students being bussed, those who live well over a mile from the schools, are the burdens racially equalized or do we have mainly black students on buses? Do we have cross race transportation? That is, do the buses

have black students and white students and black drivers and white drivers on them?

The after school buses, the special program bus, again don't come into play as a desegregative device until the 1980's, so that the M-to-M program is reinforced when after school buses are made available.

Q. This may be kind of the flip side of that question, but what in your view should and could have been done specifically during that time frame?

A. Well, for example, the important moves on facilities and equipment, important change—what schools to close, what new schools to build, what portables to put in place, could have been approached as a facilities plan grounded in how to have it strengthen and reinforce desegregation aims of the district.

[50] Instead, it looks like conscientious work was done making sure the leaks were patched in the roofs and the windows were sealed and so on, and the stair landings were repaired, but the facility plans and the equipment changes were not connected or linked with desegregation.

Q. And can you give us an example of how you might do that or what that might look like?

A. Well, for one thing, the idea is that you wouldn't —when you come to the question of portable classrooms, you wouldn't be race neutral about it. You might have to use portable classrooms because you don't have the means to add an annex, but you wouldn't put the portables into areas where you have Type 3 schools. For instance, you would not reinforce increasingly virtually all black schools by adding more classroom space for the students there.

You would ask about every move, not whether there was a shallow effect on racial composition, that is of the sort called a zero to five percent impact on racial composition, but a systemwide effect. Which school closing, which portable addition that we make ramifies desegregatively throughout the system.

That's what I'm urging. That's what could have been done, because there were deep changes taking place in the district. People were not sleeping. It wasn't a habit bound sleepy hollow district by any means. It was rapidly [51] entering the modern suburban era.

Q. Are there still opportunities that can be seized in DeKalb County?

A. Would you repeat that?

Q. Are there still opportunities that can be seized for desegregation within DeKalb County?

A. Well, the sorts of things I'm talking about can always begin. The startup cost would have been lower earlier. It would have been wise to introduce magnet schools in the development in 1976 than to do it in 1988, but it's still achievable. It's still attainable.

It's possible, in other words, to give priority to desegregative strategies surrounding all of the decisions you are going to be engaged in making adaptively anyway.

That's what I'm urging. I'm not urging some alien remedy apart from the 17, 18 years of the history of this case be imported, dropped on the county.

I am rather saying how about shifting from a racially neutral strategy to a strategy which pursues unitariness consciously and explicitly.

Q. Dr. Dentler, what is wrong with a race neutral approach?

A. Well, a race neutral approach is what you would devoutly want to get to under the Constitution if you had eliminated the vestiges of segregation and discrimination. [52] In other words, you get to a racially neutral set of policies and practices after you have gone through a period where you eliminate gross inequities.

If you had tried to go race neutral before that time, you have locked into place the effects of disadvantagement on minority parents and students, and so they are doomed to run forever an unequal race.

You can do that with the best of intentions. You can begin to be as color blind as you possibly can be and discriminate racially for that reason, and that's my concern here.

There are, for example, not among the new programs that have been introduced since 1981, there are not programs that are tied specifically to desegregation. They are tied to all of the students or all of the district on a color blind basis.

Q. Dr. Dentler, are you aware that DeKalb is moving to a junior high school system?

A. Yes.

Q. And have you done any research in the area of junior highs or middle grades?

A. I did a national study with James Molitor, a colleague sociologist, in 1981 through '83 on reorganizing the middle grades in American public schools, meaning questions of moving from one form of grade structure to other and where [53] that was taking place nationwide.

I have been a student of middle schools and a shift from junior high schools to middle schools for 20 years.

The thing that intrigued me about DeKalb was that they are introducing junior high schools at the very time the junior high school is disappearing as the dinosaur of grade structures in American public education.

It was, itself, an educational reform in the 1920's and 1930's. The junior high school in that era was the time you got assessed and evaluated for whether you were going to go on to high school or not. That was an era when two out of three youths didn't go to high school.

That era is passed. That purpose for junior high schools is gone.

The change for the last decade has overwhelmingly been in the direction of formation of middle schools or intermediate schools which are different programatically from junior high schools, and where people aren't adopting middle schools they are adopting combinations of

kindergarten through seventh or kindergarten through eighth grade as their preferred approach.

Q. Have you taken a look at whether a transition to a grade reorganization can be used as a desegregative tool?

A. I would say in the 200 districts that we had data on [54] for our national study for the National Institute, that 150 of those had used grade reorganization as part of a desegregative strategy.

That is, this is another tool in the kit of desegregative tools. It's a powerful one. Sometimes it's used superficially simply, for example, to move eighth graders into high schools because there are more of one racial group or the other in the eighth grade, but when they are attached to program reform efforts, it can be done on a far more profound basis than that.

You can do something here that's educationally desirable at the same time it increases equality of treatment.

Q. Do you see any possibility for doing that here in DeKalb?

A. Well, not by taking the junior high school approach, through there might be other reasons, other complicated reasons I don't know about for developing junior high schools in DeKalb.

I can't—I haven't studied the details of those.

I do note that the two projected instances of changes are instances which reinforce the Type 1 school arrangement and Type 3 school arrangement. In other words, they do not make combinations that improve the racial balance of those schools.

[55] Q. Is there a way to do that?

A. I believe so, yes. I believe, for example, that one would start by developing magnet middle schools and employ those as demonstration and experiment stations for helping parents discover the advantages of desegregated intermediate education.

Q. Have you taken a look at the projected pairings presented by Dr. Armor and Dr. Freeman as to the combinations of junior-senior high schools?

A. Yes.

Q. Do you have any view as to what their desegregative impacts would be?

A. That's what I was—I'm sorry. That's what I was referring to. While I don't know some of the other reasons that might impel him in that direction, the two projected combinations maintain the racial composition status quo. They don't advance the aim.

Q. Dr. Armor when he testified said at one point that you can't do it, because you have got to go up to the white schools because of the way the district is shifting to black.

What do you have to say about that?

A. The district is moving and has been moving for more than a decade to a condition where it will be half black-half white. No one is able to forecast beyond that. [56] That's forecastable. I will bet practically anything I know about this subject on that likelihood.

That's not only a likelihood; that's an opportunity. That's an opportunity to say what else would we like to have happen. How can we preserve a 50-50 district. How can we maintain this.

I think anticipating a change beyond that is again an extension of a racially neutral and essentially passive policy approach, waiting to see what happens.

I am talking about taking a series of steps which continue to hold and attract both white and black households in the county, which, as I have read his materials, is what Dr. Freeman subscribes to, so he and I don't have a difference on this. The difference is in the priority we would give to desegregation.

Q. I would like to turn your attention at this point to the M-to-M program, Dr. Dentler. I believe that's one of the tools that DeKalb County did in fact use; is that right?

A. Yes.

Q. Are you acquainted with such programs generally?

A. Yes, I am. I have looked at transfer programs and monitored their implementation in other districts over the years.

Q. And generally how do they operate?

A. Student transfer programs are one of the oldest devices [57] that grew up immediately after the Brown Decision in 1954. In the first decade they were called open enrollment and free choice plans.

Then they sophisticated a bit as more and more people, for example, exercised an open enrollment, the opportunity to resegregate themselves, and, as the Supreme Court reached its decision in Green, transfer programs turned into controlled, race controlled programs.

You could transfer if it didn't modify the racial composition of the student body or if it contributed to desegregation.

So what we have in DeKalb County is a conventional approach to this, one that can be found in many, many districts throughout the United States. It appears to have existed all the way back to the beginning of the 1970's, a few students transfer. I have that in the answers to the interrogatories.

But the M-to-M transfer program as we have come to know it in the county today seems to have really begun in 1977. It was a feeble, tiny enterprise until about 1983, and then it began to take off, began to enlarge.

Q. When you were doing your analysis, what kinds of things would you take a look at in order to assess the M-to-M program?

A. Well, I spent a long time answering the question how [58] many students entered the program, how many people were in the program in each year from 1977 to the present.

Then I discovered in the last week's exhibits here that that had been done by the school defendant, but it wasn't available to me. I had to build it up out of records.

How many students are in it, how has that changed over the years, what are the racial compositions, the differences at school levels, and who goes where with what effects.

Q. By the way, do you attach any significance to the fact that it wasn't available from the system in that form?

A. Yes. As far as I can see, it wasn't until the last year or two at most that the M-to-M program gained some priority in the district.

In other words, the record I have which were provided annually, for example, to the Bi-racial Committee, differ in format, were not published, were casually devised, some of them were filled with mistakes which were noted by the administrators, so this—until very recently, this has been of very minor importance is what I would conclude from that.

More recently, they have put out the brochure. They have started to exercise some outreach. They have taken their own interest for the first time in the question [59] of who is in it, in improving the projection of seats and the like.

So it's picking up weight, and that's not surprising because it was so small it served less than one half of one percent of the students in the district in 1977.

It grew very little between 1977 and 1983, whereas now it serves about four percent of the elementary students and about nine percent of the high school students. Still a minor influence on the demography of the county school district. Nevertheless, there's a tremendous increase in involvement.

More than 90 percent of the remaining seats that are available in the program as of 1987 are reserved for white and other students. These are likely to continue to go empty. They appear to me from the records to have gone empty in each year they have been listed because most of them are based in Type 3 schools and some Type 2 schools.

They are unpopular with white students and, indeed, those are schools who have lost white students in recent years, not gained, so the M-to-M program has nearly reached its ceiling of impact on the district. It has almost gone as far as it can go.

My guess is that by 1990 it might serve six percent of the elementary students and 11 percent of the high school students, and that would be its effective [60] ceiling.

Q. Have you reached any conclusions as to the desegregative effect of the M-to-M program, Doctor?

A. Yes. The M-to-M program, my conclusion is it doesn't desegregate a single school in DeKalb County's School District, that it does not make a contribution to the overall improvement of racial balance in the district, and this has to do with who applies and who goes where in the program.

Q. Let me show you what has been marked as Plaintiff's Exhibit 29 and ask you if you can identify that.

A. Yes. This is a table that I made up from the records that were available annually, ard I cast them into a framework that reflected racial, student racial composition of the elementary and high shools.

Q. And how does one read that table? What are the various categories?

A. Well, the categories are—first, the top rows have to do with elementary schools and the M-to-M program in 1977, 1980, 1982, 1987. Those were the four years on which I could get complete information.

The E stands for enrollment. M stands for number of students in the minority to majority transfer program.

Q. And that's by percentage; is that right, sir?

A. And that's by vertically taken percentage so that, for [61] example, 25 percent of all the students were in elementary schools that were on average nine percent black.

Two percent of the students in those schools were part of the M-to-M program, so you can see from the table that the schools that, the 19 elementary schools that on

average are 97 percent black were heavily subscribed in the M-to-M program at first. They have gone toward zero over time.

In other words, originally students in the, black students applied to go to a different predominantly black school from the one they would have been assigned to by attendance zone.

As those seats were used up over time and as those schools became virtually all black, the action shifted to the transition schools, so students in M-to-M are not making use of the virtually all white schools, and they are not making use of the all black. They are making use of the Type 2 schools.

The M-to-M program has not impacted the Type 1 schools.

As far as I could see by analyzing the records of applications which I had for recent years, it's not likely the M-to-M program will do that over time, either.

Q. And why do you say that, Dr. Dentler?

A. Well, there are seats that will continue, in those [62] schools that will continue to go unused because those schools are farthest from the black residential neighborhood, they are least well known, their outreach activities is limited under this program.

It's very difficult for black parents to know whether there would be some advantage in sending the child to one of those schools.

Q. Have you reviewed either of the studies done of the M-to-M program?

A. Yes.

Q. And what were those studies?

A. Well, there was a survey undertaken of parents in the district, a mail survey, and it included a subset of M-to-M parents, and most of the responding parents thought that they had chosen schools that were desegregated and offered better educational opportunities of one kind or another.

In other words, there's a double incentive. Parents think they are getting a better opportunity and they are getting a more desegregated school.

A similar study by the district, however, found that M-to-M transfer, black students do less well on achievement tests than do those who do not transfer.

Later on, I got a one page regression analysis which I think said the contrary. I got that last week.

So I have one study from the district which said [63] M-to-M students don't do as well, and then I got one that said they do better, so I don't know.

Q. What sort of support services are important for an M-to-M program?

A. There's been a great deal of evaluation, research on open enrollment programs, on freedom of choice programs, and then more recently on student transfer programs.

The benefits of student transfer are very much a function of the extent which the staff and students in the receiving school are prepared and supported by the district for the task of welcoming and aiding those students who are coming in as transferees.

In St. Louis, I was in charge of negotiating that for the St. Louis Board of Education with the participating county districts. Twenty-one of them host students from St. Louis on exchange. We have very complicated mutually agreed upon terms and conditions for receiving and assisting those children. There are now nearly 15,000 of them.

The districts that do that badly have high student turnover and high student failure rates. The districts that do it well have benefitted the children from St. Louis who have gone into them.

So either you are welcomed and made at home and aided in your change or you are in difficulty. You are worse off than if you had not transferred.

[64] Q. And have you taken a look at how DeKalb addresses that problem?

A. Well, again, DeKalb has since 1981 introduced some good educational programs. It has, for example, human relations officers in most of its schools. That's helpful.

So are the instructional improvement programs that have been introduced helpful. Those are not, however—those again are race neutral. They are not explicitly aimed at the 95 percent of the transfer students who are black.

So, again, we are not talking about who is going where and how can we assist the children and who have suffered most historic discrimination. We are talking about having good programs available within to get there which is a nice idea but doesn't contribute to desegregation.

Q. How would you summarize your findings on the M-to-M program, Dr. Dentler?

A. The M-to-M program is a help. The district, it seems to me, can take understandable pride in having expanded it substantially over the last two years. It was quite feeble before that. I would imagine that it could even begin to introduce support and assistance provisions for the students as the program matures.

So I think this is a positive potentially beneficial program that's catching on now.

In order to have an impact on the district as a [65] whole, it would have to be correlated and linked with a series of other desegregative actions.

As what we would call—to stand alone, it can't make it. It's too small. It's too weak.

MS. WILDE: Your Honor, I'm about to shift to magnet schools. Would you like me to continue or would you like me to stop here?

THE COURT: Well, how long—well, I have got another hearing at lunch time. I guess this is about as good as any time to break. I hope I can conclude that and get back on schedule.

We will recess until 1:30.

(Luncheon recess at 12:30 o'clock, p.m.)

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[66] AFTERNOON SESSION

BY MS. WILDE:

Q. Doctor Dentler, before lunch we were talking about the M-to-M program. The question I didn't ask you is, what actions weren't taken that should have been taken to enable the M-to-M program to reach capacity?

A. The M-to-M program has to be promoted as a source of consumer options to parents. It was not so promoted until very recently. It has to have demonstrated posting and assistance services available for the receiving —in the receiving schools for the transferring students. Those are still missing.

All of the schools have to be open to transferability. There have been years in which one set of schools have been somewhat pitted against another, controversies over, for example, whether schools in racial transition could be receivers for transferees, or whether it's only virtually white or white schools should be the receivers. It seems to me obvious that you would want to optimize it wherever you could, and you would want to build a reputation that a transfer student has good chances of benefiting from the transfer.

Even if you did all of those things, I was trying to represent that this is a very minor feature of a desegregation policy.

[67] Q. Are there ways of targeting schools?

A. There are ways of targeting schools, for example, by having other kinds of programs going on there which parents recognize as beneficial. I don't mean magnet programs, but sources of assistance; since most of the transferees are black students and will continue to be, a desegregated district often attaches its compensatory programs and its enhancement programs to the transfer act.

Q. What's been the result of a failure to do that in DeKalb.

A. Well, it's not only to maintain the racial neutrality, in my opinion, but to guarantee the continuation of the racial disadvantagement that was there in the first place. As the proportion of black students hosted by the district goes up, the magnitude of the harm done multiplies, if the only thing you're doing is carrying out some operations such as the present M-to-M program.

Q. We have been talking a lot about various desegregative tools that could have been used. What in your view has been the result of DeKalb's failure to use those tools?

A. Well, I characterized them first as missed opportunities. I would characterize them in combination. If you don't pick up any of those tools from the box, you have only a Bi-racial Committee and an M-to-M transfer program of very limited scope, then unless uncontrolled [68] natural forces or state policy reversed your condition, you're going to compound the discrimination and de facto segregation that you began with. And that's exactly what I think has occurred.

There is more racial isolation, there is more racial identifiability in schools now by far than there were before the remedial steps were taken.

Q. What in your view was the duty imposed upon defendants?

MR. SAMS: Your Honor, I would object to this line of questioning. I think that's an inquiry for the court, not for this witness.

MS. WILDE: I'm happy to rephrase the question.

THE COURT: All right.

BY MS. WILDE:

Q. Is there any evidence in your view that the defendants have taken seriously the obligation to, quote, perpetuate desegregation, Doctor Dentler?

A. No. There are specific steps that can and are implemented in other districts I have worked on to accomplish that language, and they are missing here. They have not been taken here.

More specifically, for example, you have got to have enhancements and compensatory instructional efforts to undo the effects that you had before you introduced a remedy, [69] and those haven't been introduced in the 17 years in question, and I can't assess what might come into play two years from now.

Q. Let's talk specifically about magnets. I believe you testified that magnet schools are among the programs that could have a desegregative effect, is that right, Doctor?

A. Yes.

Q. What is a magnet school? How would you define it?

A. Well, magnet—a magnet school is a school that people apply to have their students, their children and youth attend on a voluntary basis out of shared interest in the programmatic theme of the school, so it has three characteristics: It's voluntary in its enrollments. Its thematic in its program, and, number two, people know in advance that it's going to be racially representative of the district or it's going to have a racial composition which is explicitly desegrated.

Q. How long has that idea of a magnet school been around nationally?

A. Well, it grew up out of several cities in the 1960's and was enormously reinforced in its spread and development in 1976 with the Emergency School Assistance legislation of the Federal Government which pumped well over a hundred million dollars into the development of the magnet programs in hundreds of school districts.

[70] Q. How long has it been used as a tool for desegregation?

A. As a tool for desegregation, from its outset, when it was first devised in Pittsburgh, for example, it was

a desegregative tool when it was built into the federal legislation in the first place.

In today's federal legislation, it's even more explicitly a tool of desegregation, so some districts have used magnet schools for other purposes: For example, to appear to desegregate. In my line of work, we call it magnet-school-as-a-shell game for a school system. But most districts have used it as part of a desegregation plan that is larger than the magnet school or magnet program approach.

Q. Have you yourself done any work in the area of magnet schools or magnet planning?

A. Yes, I have contributed to developing magnet schools and magnet desegregation plans as far back as 1967 in Buffalo, New York, and in Rochester, New York; in 1983 I co-authored a—I studied for the U.S. Department of Education on magnet schools, and their effects on achievement and their costs and the desegregative contributions they make.

Q. Have you reviewed DeKalb County's current magnet program?

A. Yes. I have not only looked at the representations [71] that Doctor Freeman made in his deposition, but I have looked at what has come up since that time, what the representations were in court.

Q. What conclusions, if any, have you drawn from that review?

A. Well, that the magnet school strategy has yet to come to DeKalb County. There are some—there are some magnet programs which are themes available within the schools. For example, there is a science program available. I totaled up the number of students actually enrolled in the programs in 1986 and got approximately 500 students altogether out of the more than 70,000 students in the—

Q. Has DeKalb County's program had any desegregative impact in your view?

A. Well, they are not—there aren't magnet schools yet. There is not a single magnet school in DeKalb

County as I have defined one. And by the way, I didn't make my definition. I went from district to district interviewing people and asking them what their definitions were, so this is a state of the trade in school administration. The definition is commonplace and widespread. The open enrollment campus, for example, is a specialty school for a set of special services for students with special needs, but it's not a magnet school in the sense that parents or students who are 18 years of age or above apply to attend [72] it because it offers an instructional theme and because it would—they know in advance that it will be desegregated. That's not what the open campus is.

So, to describe it as a magnet is to demonstrate that the magnet idea has yet—even after years of instruction by a magnet expert, David Armor, has yet to penetrate the policy planning of DeKalb County schools.

Q. What would it take to have magnet program with serious desegregative impact in DeKalb County, Doctor Dentler?

A. Well, there are some districts in the country that operate some good magnet schools which have no consequences for desegregating the system. A vivid illustration of that is Houston, Texas, for example, which has some excellent magnet schools and some excellent magnet programs, but which maintains almost 100 elementary schools that are all black, alongside those magnet elementary schools.

So, I'm asking the question, how many seats, how many programs would you have to have in order to have an impact on the county as a district, and my answer to that question, which I have both researched and which I have planned on in other school districts, is that you would have to have at the bearest minimum at least from five to 15 percent of the seats in the system contributing to the magnet schools or the magnet programs.

When you get below that level, you might operate with [73] one or two or three excellent schools, but they have

no effects. They would be like the M-to-M transfer programs is pragmatically.

Q. Have you reviewed Doctor Armor's survey on magnets and the possibility of their use for further desegregation.

A. Yes.

Q. And what conclusions have you reached as a result of that survey?

A. Well, I think, of course, the survey was not based on an analysis of the responses; I have seen nothing except the percent of answers to each of the telephone questions, and no relationships between any of the responses, but it's serviceable so far as it goes.

It tells us that people would be interested. It tells us that parents would like to have choices; it tells us that people would move toward desegregated schools if those schools offered educational opportunity that were distinctive; and it in my opinion lays a foundation for the enthusiasm that Doctor Armor has for magnet school development, which I share. The difference is whether it has yet reached DeKalb.

Q. What in your view is the viability of magnets within DeKalb as an effective tool?

A. Well, in that connection, one of the things you don't do, one, in my judgment, that Doctor Armor thinks you do do [74] is ask people what themes they would like to have and then do your planning based on their responses.

My experience from trying that elsewhere is that if people don't know what a magnet school or program is and you ask them, the only thing they mention are a few schools that they know about; for example, they say, "Well, I would like a school that emphasizes reading and writing," or "I would like a school for gifted students," because they have heard of such schools, or they have been to them.

I don't think you get an indication of the scope of interest until you develop a magnet plan with some citi-

zens, and at that juncture people show up, people start to materialize, faculties start to express an interest, and they take part in the planning. That's how you develop them.

So, in order to do this, you would have to do what hasn't been done for over a decade in DeKalb: you would have to have citizen planning, faculty planning, staff training, staff development, and investment in a whole series of schools which you are going to designate as the places where magnets would be emerging.

By the way, the emergence of magnets has consequences on your other assignments.

Q. What do you mean by that?

A. Well, you introduce magnets in part in order to [75] desegregate non magnet schools. As a school is emptied out of its non magnet students over time and it just has people going to it because it's a magnet school, you have to make adjustments in who goes where to school for a regular school; and that's your occasion for modifying student assignment planning at that level.

There is no such thing as introducing, say, 10 magnet schools into DeKalb and then not modifying the regular student assignment plan. It won't work.

Some of the magnets would be in all black schools, some would be in transition schools, some would be in all white schools, and that will create changes in student assignment policies of necessity.

For instance, it might mean you would introduce a controlled choice strategy. Ask the parents—open the system up so parents have a chance to choose among many non magnet schools, or to give their preference.

By the way, these are—these innovations are fairly commonplace in other desegregated districts. I'm not talking about something you can do in the future. They are particularly well developed nationwide over the last decade.

Q. Have you taken a look at what are called the integrated experience programs within DeKalb County, such as the writing centers and that kind of thing?

[76] A. Well, integrated experiences dropped away nationwide after the Keys decision in Denver where part-time programs for interracial exposure were evaluated by educational researchers.

The court in that case, both at the district and the Supreme Court level, using that evaluation information, concluded that they are not worthwhile.

Q. Why is that?

A. They are not worthwhile for two reasons: one, children don't get enough exposure so that there is a social learning that you can measure from part-time programs. It doesn't do what you think it will do, and that is increase interracial competence.

Second, many of the programs had the effect of disadvantaging the black and chicano students in the Denver—

Q. How would that happen?

A. Well, by having a program which put children together in a way where what the minority child learned from the brief encounter was that he wasn't scoring as high as his white counterpart, and so you come out of it with a brief interlude, a brief encounter, doesn't change attitudes, doesn't change achievement and further discourages the self regard of the child who is bussed in for the part-time experience.

[77] Q. I would like to shift again—

A. I would like to add that they were forbidden in the Austin corridor based on these.

Q. I would like to shift again, Doctor Dentler, to the question of allocation of resources.

Have you done any examination of the DeKalb County system on a school by school kind of level?

A. Yes.

Q. And what was the nature and purpose of that examination?

A. Well, I started with—I started my review some months ago on the question of "Well, what has the Board of Education and the administration done desegregatively in DeKalb?" I reached the conclusion that the system was still seriously segregated.

Now, what is the effect of that segregation? It could be, for example, that it was mitigated. It could be that children were treated so equal within the system that the segregation, offensive as it is, would not have as deleterious an effect as it might otherwise have, so I wanted to know, in other words, under the circumstances of having schools that are all white, having schools that are all black, having schools that are becoming all black, what is the state of equity in the treatment of students. And so I began to join in a series of analyses that would [78] answer that question. I call them the racial effect series.

Q. How did you do your comparisons of schools within the DeKalb County system?

A. Well, because we want to know whether the distribution of resources and the treatment characteristics of the schools were racially equal, the dependent variable, as we would call it in the analysis, would be the student racial composition. And that could be for 1986 for racial composition. And that could be for 1986 or for previous years.

Racial composition could be approached in terms of my typology that I described this morning, Types I, II and III, and I started the analysis with that, or it could be with more a conventional variable, percent black students in 1986, or percent in any given year; or it could be average over a period of time. We use them all as the variable to be accounted for statistically, that is, its variance to be accounted for statistically by expenditure and other resource and treatment variables.

Q. You mentioned the typology earlier. Did you do any tests to determine the validity of that typology before you used it in the analyses?

A. Yes. The first question about the typology, which is just one of the ways we classified the schools racially, the question was, what does it signify. My idea was that [79] some of the schools had been identifiably white, as I explained this morning, for more than a decade and still are. Some others had been identifiably black for more than a decade and still are, and some schools were changing, and the residual category, the Type II changing schools, were changing in the direction from majority white to majority black.

Now, how would you make sure that the typology classified could mean this? Okay. The Types I and II seem to me to be polar opposites in student composition. These are just two logical ends of the spectrum. Type II is intermediate, it's different. Schools inside it have changed over time.

What about the period, the problem of the validity of the period I chose, the decade? I thought that the decade was the key one because I looked at the enrollment totals and the population totals for the county in each year from 1969 to the present. 1976 was a change point. That is, there was a rapid infusion and a rapid exodus and a rapid decline in school-aged children all heading between 1970 and 1976, or '75.

In '76, you start to have a relative stabilization of those processes. The percent black students reached its present halfway mark in 1976. The typology focuses, in other words, on the contemporary desegregation phase. In [80] other words, after—from '76 on we were in a period when the district could have done a variety of things to cope consciously with desegregation. The period before that was a period of relative uncertainty; it has the impact of coping with the court orders. I have given it a period of delay. And so that was the logic.

I also noticed that the blockbusting activities in the county seem to have reached some kind of cut down, some substantial reduction by 1975. There was not only indignation, there was litigation around that.

I also noticed that M-to-M began in earnest in 1977; the year before it we had some busyness. There were transfers that the district was doing. I noticed that the Bi-racial Committee came to life the year after the typology, so I was reaching for a date when things—when something other than closing six virtually all black schools took place.

Q. All black or all white schools, Doctor Dentler?

A. In 1969, virtually all black schools were shut down. What happened after that that we—

Q. Very good. Thank you. I was confused.

A. Now, what about my measurement validity on the typology? That's another question here. The Type I and Type III schools had the pattern of being identifiably white and identifiably becoming black at the very least [81] even before 1976. In other words, you could do enrollment projections and foresee, if you didn't do anything else, if you had no policies, you were going to get Type I and Type III schools and sure enough, that's what you get.

Another way of putting it, my typology is not a continuous variable, but it correlates .9 to .95 with the continuous variables I do have, such as percent black students, such as average percent over the decade. So, in that sense I have got considerable measurement validation.

Q. Once you have these categories, Doctor Dentler, the typology and the other measures of racial composition, what is it that you did from there? What was the methodology and the purpose of your inquiry?

A. Well, the—if this had been a research project, the research hypothesis would have been that student racial composition has zero association with resource distribution and school treatment characteristics. This is a policy analysis, not a research project, limited to the one district, so we are just using a working hypothesis which is a test of whether there are segregative effects persisting and prevailing in this district is whether the treatment characteristics are associated powerfully with student

racial composition. Are you disadvantaged if you're black and you go to a Type III school? It's logically conceivable that you aren't; hypothetically [82] conceivable that you're not, and so that's what I wanted to find out.

My working hypothesis was that if you are a child in DeKalb county, it would be best to be a child in a Type I school and next best to be in a Type II and the next best to be in a Type III, which is a violation of the principle of free, inclusive and uniform public education.

Q. Were you right?

A. Well, I was—the working hypothesis was supported in 16 out of 17 of the statistical tests we made of the typologies. And I don't think I have had a comparable project in the last decade where anything that was socially measured came out that often and in that firm a direction.

In other words, out of the 17 tests, there was only one instance where a racial effect, a racial distribution racially influenced distribution did not show up. And that particular measure was simply teachers' Master's degrees.

Q. Let's take a look at the various—you have mentioned treatment characteristics. What is a treatment characteristic, Doctor Dentler?

A. By "treatment characteristic," I mean a school is a learning environment, and how you distribute, how you assign or deploy materials, adults, programs inside that environment predicts how children will experience the environment, how they will be treated by it, so a treatment [83] variable could be percent of leaking roofs. If the environment leaks, that's nasty. And the question would be whether Type III schools have more leaks than Type I.

A treatment variable can be the experience and the preparation level, quality, extent of teachers. It can be the per pupil expenditures. It can be the number of books per student. These are just indicators of how you're treated when you enter the environment. Do you get a teacher who knows her subject? Do you get a classroom that has books in it that are—there are enough of them so that some of them get to you, and so forth?

Q. How did you choose the treatment characteristics that you used in this analysis, Doctor Dentler?

A. I used the treatment characteristics that were available from within the range of data that had been collected fairly consistently over time by the district as of obvious importance to it, and then shared with the parties. In this case, on interrogatories.

Q. One of the characteristics you examined was teacher experience. Why did you examine that characteristic?

A. Well, teacher experience is associated with how students are treated. In other words, an experienced teacher is more likely to treat a student effectivey with regard to instruction than an inexperienced teacher.

Now, there are important exceptions to that. Those [84] exceptions include the fact that some people are very fresh and alive when they are very young and they are just beginning, and they take risks that more experienced teachers don't take, and they may be closer in age to the learner, so a proportion of first year beginning teachers are highly effective and then it thins out.

What we pay for, what we recruit, what we employ, what we give benefits to in American public education are people with higher experience. I would rather be taught by someone who has spent years in her subject field than by someone who has not.

Q. Do you have any sense as to the numbers of how many of the first year teachers might fall into your category of the exceptional enthusiastic category?

A. Oh, I don't know. The research that is done on beginning teachers was done in the '60's when there were pressing teacher shortages, and there were enough newcomers, enough young teachers. We haven't been in that era for a long time. Districts are not hiring that many first year newcoming teachers, but at the most, I would be talking, say, about two out of 10 teachers having an initial advantage from inexperience of being bright and

bushy-tailed and not yet sort of beaten down by the bureaucratic nature of public education.

But in research, it's difficult to relate teacher [85] experience to a variety of other variables, including achievement. There is a research problem here of having too many multi-varied considerations; too many other things are affecting achievement.

In policy and practice terms, I don't think there is any dispute. We certify teachers on the basis of experience, we recertify them on the basis of experience and so forth.

Q. You also took a look at teacher education. What's the importance of that characteristic?

A. Well, teacher education, going back for further training, self initiated continuing education is the hallmark of improving your competence in teaching. It differentiates quite markedly, in my opinion, between people who are struggling to stay alert and alive about new knowledge and new pedagogics, and those who aren't, those who go to sleep.

So, further study, graduate study, is indicative, and districts pay for it. That is, that's an incentive that they hold out because they benefit; their students benefit.

Q. You also took a look, I believe, at teacher turnover. Why was that an important characteristic for you to look at?

A. Teacher turnover is a major source of stability and continuity in the learning environment. Low teacher [86] turnover means, with the exception of—with certain important exceptions, that you have a learning environment where a child knows who is going to be in it, how it's going to be, what the school year is going to be like, where the other teachers cooperate with one another because they know one another. You can count on the future.

High turnover means uncertainty, disruption, dislocation, lack of cooperation. Now, there are exceptions. If everyone on a school faculty represents deadwood, then

high turnover is desirable, but I don't think that's particularly applicable to DeKalb County. I have studied districts where that's the case. I don't see it here.

Q. How about number of library books in the elementary schools, why is that important?

A. As I say, that's just a treatment characteristic; it answers the question, relatively speaking, how many books are available to a child, with the likelihood that if I'm learning to read, I can read books that will further my skill; the size of a library in a school is another conventional attribute of the environment, so it's a treatment characteristic.

Q. How about per pupil expenditures, what's the importance of that?

A. That's one of the most compelling ones there is—[87] well, I have worked in over 100 local school districts. I have never been in one where I met anyone who didn't think that how much you spent mattered or that you didn't get what you paid for. Pupil expenditures are the first line of examination of the viability of a public school district in the United States.

Now, it's true that some districts are more efficient and smarter, cleverer in spending their dollars than others; it's also true that some districts spend a lot and get very little, but mostly, most districts get what they pay for, so how much you spend in a school is a measure of the treatment of the children in that school. And again, it's mitigated by a variety of other considerations, but it's critical. Parents understand it; school board members understand it. They strain ordinarily in most districts to try to make it equal except under circumstances where you have something like race intruding.

So my question was, do they expend equally across schools in DeKalb?

Q. By the way, was any control put in for the size of the school in this analysis?

A. Yes, we had—in the regression analysis, we had the size of schools as one of the step variables in every one of the regressions.

Q. Now, you also used what you have called outcome [88] measures. What are those, Doctor Dentler?

A. Well, that's—that has to do with, for example, the obvious, a measure of student achievement. We had the California Achievement Tests. The school defendants came up later with the Iowa Skills Test. They are both creditable measures, conventional measures of school achievement.

I would like to mention in that regard that two California or two Iowa tests do not make a gain or a loss; in other words, we used one because we had it. If I had another one, I really couldn't talk about gains. They are all cross section; you just have it for one year or another. In other words, it's specious to act as if you're locked in a room, you get a score when you first go in, then you get a score later on, you subtract one from the other, and that tells how much you have learned. Tests weren't devised to do that. And what's more, they are given in such a way that it's always a current indicator. Any one of the tests is a pretest, or anyone is a post, if you want, so we just used it as—the 1984 California test as a main measure of outcome. There are other measures of outcome: student retention.

Q. Why is that important?

A. What are the success rates of students? In Georgia, the word retention is a euphemism for school failure. To [89] me, it's a twist of the—it's a twist of the term. If you're failed, you're not really retained, but it means held back. It's the same as non-promote.

Q. What does that have to say about the way the system has been dealing with its students?

A. Well, only that it's another indication of how it works out; that is, how have the children been treated, what are their scores, how many of them pass the subject or skill areas that year, since they have proficiency tests, and supposedly retention is based on meeting the level of proficiency for your grade level.

Q. You also had a measure called failure to complete levels. What was that about and why is that important?

A. The question here was we had enough information from the district to get up a measure of the discrepancy between, that is, who is promoted but didn't complete all the proficiency levels anyway.

Q. And why is that important?

A. Well, you might have the possibility—for example, if there is a racial effect, you might have black students who don't perform with proficiency but who are moved on anyway just to move them up and out of the system, social promotion.

Q. You also, I believe, looked at percent black teachers in schools; you build in a Singleton Index, is that right? [90] A. Yes. And there the question is what's the distribution of teachers by race and how does that—how is that related to student composition. Two questions about Singleton. One has to do with that as a court-ordered figure to comply with. Did the district comply or not? Another one is, what's its pertinence to the teaching and learning environment, so we use that as another treatment variable.

Q. So, once you had your categories, your measures of racial composition and your treatment characteristics, what kinds of analysis did you do with those, and what did that tell you, Doctor Dentler?

A. Well, first we analyzed the treatment and the outcome variables in relationship to the typology of schools, and the answer there is that in 16 of the 17 analyses we ran, children in Type I schools are advantaged over children in Type II and Type III schools, that the treatment variables are more favorable in the Type I schools, with the single exception I mentioned of the master's degrees, per se.

All of the tests ran in a pattern of direction. Now, sometimes the Type II schools were not—it wasn't always a uniform step pattern, so that Type I was best,

two next, three next. Most of the time it was like that. But as the graphs show, once in a while the differences pile up between Type I and III only, and don't show on Type II.

[91] But what they mean is that the resources are skewed in DeKalb County; they are not distributed in a race neutral fashion. The way students are treated is skewed racially and the students are not treated in a race neutral fashion. The outcomes are skewed. Students are retained disproportionately by race. Their achievement performances are racially unequal, so all I'm saying is the consequence of inaction in the period from 1976 through the present is to compound the underlying vestiges left over, remaining from the de jura (sic) era. They have gone on, the inequalities have built up, even in a context where the district has made policy commitments toward racial neutrality.

Q. How does this compare with other districts or systems that you have looked at, Doctor Dentler?

A. Well, I don't think that I ever worked in a district which—with the exception of the Boston public schools in the liability phase of the case—I don't think I have ever worked in a district where the racial composition variable linked this consistently and firmly with every other available measure.

Now, there are things that I don't have measured that I would like to have measures on, but this isn't a research project; this is an effort at a statistical assessment of unitariness. Is the job done? And the [92] answer came back repeatedly again and again, by the way it comes back, whether you use something other than the typology.

Q. What do you mean by that?

A. Well, you get the same results if you use percent black or average percent black students over time from 1976 per school, so it doesn't matter whether you're building in change as in my Type II or you're just using present terms; the district has not equalized the alloca-

tion of resources. It has not neutralized the treatment of racial groups, and it has not offset this by having programs for minority students. It hasn't countervailed its own persisting maldistribution.

Q. By the way, I believe one of the techniques you used when you did these analyses was a correlation. Is that right?

A. Yes.

Q. Can you please explain the importance or the role of correlations in this kind of research?

A. Well, correlation analysis is the foundation of social and behavioral science analysis; except when we have experiments, we are usually dealing with correlation coefficients. Multiple regression analyses are built up off of correlation analyses, so a correlation is simply—it's a zero ordered coefficient. It tells you about how [93] two variables are associated. Multiple regressional lets you put in more than two variables, but it's still a matter of a set of correlation coefficients. I take correlation coefficients seriously as the most useful tool I have got.

On the high schools, the typology, by the way, didn't hold up in 16 of the 17 cases. In other words, I have always got to separate in analysis elementary from high school. For example, high schools have fairly equal distributions of books per pupil. Well, this is because to get accredited at all, you have got to have a sizeable library in a high school; so when you count it as per pupil, it comes out fairly equally.

So, only 12 of the 17 separate tests applied to the 22 regular high schools, and such things as number of books did not hold up. But those are all shown in the exhibits.

Q. The 12 that did hold up, what was the pattern you saw there, Doctor?

A. It was exactly the same for high schools, with the most extreme skewing on treatment and on resource distributions coming between Type I and Type III schools.

I'm just saying that on a handful of the variables, including books per student, the high school association

did not hold up. They didn't reach the level of significance that I was requiring. They might be called zero association.

[94] Q. You began to talk about other educational programs within DeKalb County. Have you had a chance to review the kinds of educational programs that have been —such as the adopt a school or such programs that have been apparently newly implemented within DeKalb County?

A. Yes.

Q. And what is your opinion of their relation to this case?

A. Well, there are some programmatically exciting entries. I think that district, for example, is a pioneer district in its lead teacher development; that development of levels of teacher competence and levels of teacher recognition is an important strategy for improving instruction, and that's going on now in DeKalb.

That program and the others on the inventory that I looked at are not introduced as deseg—there is no connection with the desegregation objective. For example, the adopt a school program is as race neutral as it can get.

Unlike a circumstance, say, in the Boston School Case where businesses said, "Well, we would like to adopt a school, we would be glad to pair one," they came in and called on Judge Gary—I was present at the sessions—they said, "But leave us out of this desegregation business. That's painful. That might lose us some [95] customers." And the judge replied, "Well, it's unpopular here and it's losing me some customers, too, but what we are doing is desegregating the schools. Now you offered to help out. Do you want help? I'm not ordering you to do anything. Do you want to adopt a desegregating school and commit to assisting it?" And the answer was, at first very timidly and nervously, "Well, okay, we will try it. Just don't say that word too often."

But as the steam picked up, that's been part of the policy. You adopt a school to help it desegregate, to improve its cross-race opportunity. You don't just adopt it because it's there.

Q. What would be the difference? What difference would happen within a program if it were done explicitly for desegregation reasons?

A. Well, first, teachers know that desegregation matters; it's not something that happened in 1970 and now you can forget about it. Teachers know that this is still working on that. They know that they might get assigned for desegregative purposes. Second, parents know. Third, white parents conclude that there are programs in the county that are aimed at retaining them. That's part of the desegregative strategy. Black parents know that there are adopt a school policies that are aimed at enhancing the learning of their children that are explicit about that, so [96] it means that you're unifying your educational aims around the elimination of this major obstacle from the past. This is a very big rock that had to be broken up and removed.

Q. Have you taken a look at whether DeKalb County has done anything with its remedial obligations?

A. It has a significant chapter one program. It has remedial services based in its schools. Again, it hasn't linked its compensatory, developmental and remedial services to desegregation.

Now, there are—there are racially grounded differences in the present school abilities of black students and non black.

Q. What should the program look like? What should it be doing?

A. Well, you ought to make sure that—just as you make sure that low income students have an opportunity to have free or reduced lunches at school, so you make sure that black students have remedial, developmental and compensatory enhancement. And you're explicit about that. And you say that's what it's for, and the school board votes for that because that's what it's for.

Q. I would like to change focus yet again and switch to the Bi-racial Committee. Have you reviewed the history of the Bi-racial Committee?

A. Yes, I have read the minutes from the time—from the [97] meetings where the minutes began to be regularly recorded through the present, yes.

Q. Do you have any opinions concerning the effectiveness of that committee as a desegregative tool, Doctor Dentler?

A. Yes, I'm familiar with these committees. I have met with them in other districts. I have helped courts write the basis for creating them. I think the idea of this committee was sound. It fits—it's a legitimate, necessary desegregative tool, and there is evidence that the court attempted to mediate uncertainties and differences that came up in the early years of the Bi-racial Committe, so here's a committee charged with advising a school board on desegregation, monitoring the main tools which are the transfer program and boundary changes, so the mandate seems pretty reasonable to me; the selection of the people in their early years meant that the meetings had content and things happened in them.

As I watch the Bi-racial Committee, the advice disappears over time. By the time we get into the '80's, it's certainly got—it's a high consensus group as far as I can see. It's not talking about alternative strategy. It's focusing only on transfers and boundaries and not having much to say about that. In other words, not much has happened in the last five years.

Q. What was it saying in the earlier days?

[98] A. I'm sorry?

Q. What was it saying on the question of desegregation in the earlier days?

A. Well, in—I don't know, I don't remember the year exactly—but there was a year when there was considerable planning; there was a review of the whole status of desegregation. The Bi-racial Committee extended its ef-

forts to consider the whole policy purview and made a series of recommendations to the school board.

As far as I can see, that happened once. There were other occasions where there were close votes or protracted debate about the import of boundary changes. That happened in years from '78 to '81, perhaps. After that, they go in to what looks to me—as far as I can read, the controversy runs out, and there are not—there are not new strategies coming up.

Q. What should have been its role for it to continue as an effective tool for desegregation?

A. Well, every district I have worked in that has a Bi-racial Committee—by the way, they usually have them at several levels. There is usually one for the district, and than there are ones for attendance areas or ones for schools. I'm thinking of Cleveland, for example, where there is a Bi-racial Council in every school. In those, Bi-racial Committees handle the question of racial equality [99] of treatment in race relations in the school system over all. They mediate it, they critique it, they publish what they find. They complain, they hold hearings, they send red alerts to the judge. They recommend changes. That's what I mean by a Bi-racial Committee. And this looks very passive to me.

Q. I'm going to shift to the area of faculty and staff. Have you done a review of DeKalb County in the area of faculty and staff, Doctor Dentler?

A. Yes.

Q. And what essentially have you done? What are the areas of your review?

A. Well, I had material on the implementation of the Singleton Standard, the idea that the proportion of certified black staff ought to equal the percent system wide.

Q. What is the purpose, by the way, of that standard?

A. The purpose of that standard is to equalize treatment in the learning environment and to give a voice to minority educational concerns in all units, from central administration outward to all the schools. Some people

reason that it also provides role models for students of both races.

Q. And on the question of role models, what is meant by the notion of role models?

[100] A. Well, the notion of role models means that a black student can discover that her hopes and aspirations are expressed in a mature adult who is teaching or leading a school. It means somebody to emulate, somebody to model one's own conduct against.

It means that a white student can discover that a black person, A, can become a teacher, a principal, and, B, does it in such a way that she merits emulation, so it's a cross race role model. It's for both groups.

Q. Have you done a review of DeKalb County's assignment of teachers by race?

A. Yes. I used the standard that I used in New York and Buffalo and in Boston. I asked the question, how close has DeKalb come to my standard? And that standard was to what extent are there schools that depart from over 1.25 and under .75 on the Singleton Standard Index. The index means, if you're perfectly on it, if you had the perfect representation, the balance, it would be 1.0.

So, a school that had a teaching staff or a certificated staff that equalled the percent of black staff in the district would have a 1.0. A school that departed by 25 percent plus or minus would, I say, be in violation of the Singleton Standard.

Q. And when you say 25 percent, 25 percent of what, Doctor Dentler?

[101] A. 25 percent of 1.0.

Q. Okay.

A. In other words, over 1.25 means it's a school with an excess of black certificated staff; under .75 it's got too few such staff to be representative.

Q. So, that's plus or minus 25 percent of—

A. Yes.

Q. —whatever the system wide number is?

A. Yes. So, my—

Q. How did you come up with that standard of deviation, Doctor Dentler?

A. I have used it—I have used it in advising other judges. I have used it in planning with school boards. It is just a rule of thumb. You say how do you know when you're in compliance and how extreme is your departure from the standard.

Q. Just so I understand, could you do the math for me? If we had, for example, 26 percent black teachers in the system wide, what would a 25 percent deviation look like?

A. I'm not going to convert it here. I'm just saying that that would be okay. That falls in my compliance categories.

Q. But we are not talking about 25 absolute points, we're not talking about two to 50 whatever?

A. That's correct.

[102] Q. So it's 25 percent of the 27?

A. That's right.

Q. Okay. And when you used that ratio to assess, what did you find, Doctor Dentler?

A. Well, I applied it to the 73 elementary schools, regular elementary schools. I found that 56 percent of those 73 fell in my okay interval; that is, that 41 of the 73 schools met the standard. I found that 16 were over it, and 16 were under it.

So, I had in effect 44 percent of the schools far from compliance with the Singleton Standard. And most of those, four out of five of those, or over four out of five of those schools that were far out of compliance were Type III schools.

Q. Long term black?

A. Long term black student schools. In other words, I can predict not only that nearly half of the schools will be out of compliance, but I know which ones are by far most likely to be out of compliance.

Q. Is there also a skew to the white?

A. The skew for the white is exactly the same. The Type I school tells me who is under—in other words, 13 of the 16 schools that have excess black faculties are Type III, and 16 of the 16 that have insufficient black staff are Type I.

[103] Q. How about at the high school level, Doctor Dentler?

A. The high schools, the—most of the high schools are in full compliance, but the pattern is the same; that is, the few that are out of compliance here fit the pattern I just described; that is, two of the Type III high schools, for example, have excess black staff.

Q. And when you say out of compliance, we are talking again about this 25 percent range, plus or minus 25—

A. Yes.

Q. —percent of the underlying figure?

A. Right, yes.

Q. Doctor Dentler, is it possible to achieve Singleton?

A. Yes.

Q. How have other districts done it?

A. This is one of the most common remedial devices available. It's one of them that's most promptly fulfilled and it's most promptly fulfilled above all not only by recruiting black staff, certificated staff promptly and early, but then taking pains to retain that staff after you have them in place.

In other words, you have to have personnel policies and practices which are retentive of your faculty and which reduce turnover.

Q. For example?

A. You would have to have—I'm thinking of districts I [104] have studied that have exemplary personnel practices. I have a series of them identified in my monograph for the National Institute of Education on the selection of principals in American schools. Those are districts where all of the teachers know that they have good chances for advancement if they perform well. They know that the policies subscribed to by the board, starting with de-

segregation, are actually going to be implemented and carried out. In other words, this is a fair and just system in which the teacher is expected to live by the rules as well.

For instance, I think convenience of commute for a teacher is an important benefit, but I don't think that teachers stay in a district if people get to move around so that it's convenient for some and inconvenient for others. I think that they stay in a district if a district explains that it has rules designed to achieve the Singleton Standard, that it intends to do it and that it's going to do it. I think teachers admire the implementation, the administration of personnel on the principle of distributive justice. And they have told me so in interviews. I have interviewed hundreds of teachers across the land.

Q. In your view, has DeKalb gotton serious about implementing Singleton along those criteria which you laid [105] out?

A. I think that DeKalb has recruited black teachers. I think it has extended its recruitment efforts out to the sources of black teachers in Georgia, at least, which is better than other districts I have seen. I think that it has not communicated a fair and impartial policy aimed at achieving full compliance; that it has made an equivocal statement about this that take convenience and seniority into account and don't uphold the idea to begin with.

For example, I favor the possibility of going beyond the Singleton Standard and having more black teachers in the future. I see no reason to be limited in the future sense to the proportion of 25 percent or 26 percent or 27 percent black teachers.

Q. You're saying increase the system wide average?

A. (Witness nods head up and down.)

But that is a matter of increasing the system wide employment of black staff. It's not a matter of equivocating on where you comply and where you don't. You

can't sort of comply or comply in the white schools but not comply in the black.

Q. What would be the role of community preference in complying with the Singleton Standard, Doctor Dentler?

A. I think that community preference can be translated into future policies, such as recruiting more black staff, [106] if the black community is interested in that, as it's likely to be.

I think that on the subject of compliance itself and meeting this order and achieving it, community preference is a detraction. I think you have to—you have got to withstand it.

Q. Are you aware that DeKalb has a transfer policy?

A. Has a transfer policy?

Q. Yes.

A. Yes.

Q. What's your assessment of that? What are its effects?

A. Well, such a transfer policy is commonplace in American public school districts where segregation, desegregation are not involved.

Q. What do you mean by that?

A. Well, if other—if other things are equal, then teachers who have seniority and tenure ought to be most convenienced. They ought to be able to elect to transfer. Their movement is more negotiable than that of beginning teachers. I have no dispute over that.

But in a desegregating district, movement is a critical dimension of compliance with the Singleton Standard and with the equal treatment of students, so this labor principle has to be subordinated to the constitutional principle, and it hasn't been. At least [107] according to Doctor Freeman, transfer is dominant.

Q. In your view, is teacher turnover symptomatic of larger problems?

A. Yes. There is plenty of research on the subject of teacher turnover as a source of student achievement and adjustment difficulties. It's also a sign, as principals

will explain to you, of the viability, annual viability of the school.

Q. Are there ways to address those problems on teacher turnover?

A. Yes. There are building administrators and personnel directors and superintendents who know full well that you can introduce personnel policies that lead teachers to want to stay where they are at, to attract them, hold them; and you can measure the viability of a school on this basis, its holding power for its faculty, and you can introduce those policies if you have the support of an administration and a school board that want to accomplish that.

For example, if you gave priority to the Singleton Standard, then you would work on retaining your white and black faculty at the school level, and you would do this because the district would be making resources available to make that possible, very low level expenditures that increase a teacher's autonomy and control over such things as field trips, curricular materials, release time for [108] planning; they all help reduce turnover.

Q. What's wrong with DeKalb's approach to the teacher turnover problem, Doctor Dentler?

A. It's not linked to a larger objective. There are some principals—as I gather it from the record, there are some principals who are taking pride in low teacher turnover, who have accomplished some strides in that game, but that's not a system wide plan of the kind that's been introduced desegregatively into the Montgomery Public Schools in Maryland, which I studied, for example, where you ask which schools is this most essential to, which schools are vulnerable, which schools are losing experienced teachers, and how do we offset that, how do we build in more stability there.

Q. Would allocation of resources in any way affect teacher turnover?

A. Yes, absolutely; teachers are very conscious of who gets shortchanged. For example, teachers don't like to

teach in schools where the resources are diminished and where students don't do as well as they might do somewhere else because of that, and they like to get out, they like to get to a school which appears to be more viable.

They are not looking for a school where the students are self-instructing, where you hand out a course outline and they all perform nicely, thank you very much. They are [109] looking for challenges. But if they are aware of skewed distribution and they are aware that some schools are more favorable than others, they are going to try to get them. And that will cause violations of Singleton.

Q. Have you done an examination concerning placement by race of DeKalb's administrators, at the school level, principals, assistant principals?

A. Yes, yes. I looked at—I analyzed both principals and building administrators; building administrators include assistant principals.

Q. What's your conclusion?

A. Well, on the matter of principals, it's fairly obvious that the racial skew is the same as it is for teachers; namely, that at the elementary level, there are 18 black school principals; 13 of them are—there are 18 black principals; 13 of them are in Type III schools. There are five black high school principals; four out of five are in Type III or Type II high schools.

Q. Let me show you what's been marked as Plaintiff's Exhibit 34 and ask you if you can identify that.

A. This is a table of 1985, '86 race of school administrators by race of student, yes.

Q. And is that indeed the figures you were giving—

A. Yes, that's mine, and that's not principals but that's school administrators, yes.

[110] Q. So the numbers you were giving us a moment ago were principals, is that right?

A. Yes, and I'm saying it's the same either way; that with principals, the distribution of principals is racially skewed by the student composition, such that black is put on black.

On school administrators, the pattern is the same; to wit, at the elementary level, among the 93 schools, there are 20 schools with students who are 81 to 100 percent black. Among those, 60 percent of the black administrators are present, so the blacker the student composition, the more likely the building administrators are too be black.

Q. What's the import of that, Doctor Dentler?

A. That Singleton Principle hasn't been carried across to the administrators, and that's a direct signal to parents, teachers and students that it doesn't have priority.

Q. What, if anything, does that have to do with the racial identifiability of schools?

A. Well, it helps reinforce it and it's a singal to emerging, developing educational leadership in the system, to a young woman or a young man, if you are black, what you may get to do is lead a virtually all black school in your future. If you would like to go to a district where your opportunity is racially neutral, it's time to leave this [111] district.

Q. Do you have any overall conclusions as to the meaning of your findings on Singleton to the question of disestablishing the dual system?

A. Yes, that student racial balance and racial identifiability is the first essential, the first way of analyzing, but the second most crucial consideration is the distribution of staff, certificated staff and leadership by race, and the record a dirtrict has in complying with its own goals or court ordered aims; and in this circumstance, the distribution supports directly the racial effects on the student. It skews them.

MS. WILDE: Your Honor, I have about another 25 minutes to half an hour. Is this an appropriate place for an afternoon break?

THE COURT: All right. We will take a 15 minute recess.

(A short recess was taken.)

THE COURT: You may resume.

BY MS. WILDE:

Q. Doctor Dentler, have you had a chance to review a summary of the testimony of Doctor Walberg?

A. Yes, I have.

Q. What criticisms, if any, do you have of his approach and of his methodology in approaching the questions in this [112] case?

MR. SAMS: Excuse me, Your Honor. I think the question was a summary of Doctor Walberg's testimony, and I don't know anything about a summary. If he's read the entire transcripe, that certainly—or the deposition—

MS. WILDE: He has read the deposition, the transcript—

MR. SAMS: She said summary.

THE COURT: I think the question was summary, I thought.

BY MS. WILDE:

Q. Have you had occasion to review the Deposition of Doctor Walberg?

A. Yes.

Q. And what critique, if any—the various depositions of Doctor Walberg—what critique, if any, do you have of his approach and methodology?

A. Well, I have not only studied those and have critiqued, but I also had the exhibits, the regression analysis both before and during the hearing.

Q. Okay.

A. Do you want to include both?

Q. Yes. Given what you have seen and read, do you have any critique of his approach and of his methodology in this case?

[113] A. Well, I was concerned first, that in his first deposition, Professor Walberg defined desegregated schools, quote, "as neighborhood schools in which there is no racial discrimination as well as voluntary transfers between neighborhood schools," and I just wanted to remark that I have not seen that definition of school, of

desegregated school before. It's novel, so far as I can tell from my years of acquaintance with this topic, which are as long as his, if not longer. And beyond that, the definition highlights the question of whether there is discrimination against black students in the DeKalb system. In other words, it takes but one standard. My answer to that question is, I have given evidence that there is such discrimination, that it's disadvantageous to be in an all black school, for instance: that you will be shortchanged if you are. So there is discrimination. I disagree with Doctor Walberg's conclusion that he has no reason to think that there is any discrimination.

Now, in order to test this, Doctor Cole and I agreed to use Doctor Walberg's data obtained from the school district for multiple regression analysis, the one you can find in exhibits 89 and 91, and use our dependent variable, percent black students in the district, instead of his, which is the Iowa Achievement Scores.

Q. What's the relevance of using percent black students [114] rather than using Iowa Achievement Scores? Why do you do that?

A. Well, we have maintained from the beginning that the way to test the question of whether there is a racial effect, whether there is discrimination inherent in the distribution of resources and treatment characteristics, is to make the proportion of black students, or some measure like it, the dependent variable in the analysis, not achievement. This isn't a research project on Iowa Skills scores. It's a test of the place of racial grouping on your fate if you're a student in DeKalb. We used his measures but ran them with this change-around. And his measures included the pretest on the Iowa and reduced lunch, free lunch, turnover among teachers, Master's degrees, length of teacher experience, so forth. And the step-wise regression results so that three of the nine available variables in our approach produce an adjusted multiple correlation coefficient of .67, which is as good as he got, except on his analyses where he used—where

he ran prescores against post-scores on achievement, and of course, those are up in the 95 to 98 coefficient range, but the three variables which in combination account for 67 percent of the variance are the mean number of years of teacher experience, the percent of DeKalb teachers who have master's degrees per school, and the pretest scores on the [115] Iowa test.

Q. So, what you're saying is his data run on percent black students gives those as the three important factors?

A. Yes, yes. These come out well above, and what's more they account fairly adequately for differences in student racial composition, so the—what I am getting at is if we ask his question about discrimination, the answer is, yes, if you're black, you're going to be in a school where the teachers have lower levels of teaching experience and where they have fewer teachers with master's degrees required in the district, I might add, over time; and third, they are going to be affected by their achievement scores, which is obvious.

Q. So, essentially the results are the same as what you were finding, is that right?

A. That's what I'm saying. His—we haven't differed in our regression analysis application from Doctor Walberg. We differ dramatically on what constitutes the dependent variables.

Q. By the way, what is the effect of school achievement, of desegregation on school achievement? That was a topic that Doctor Walberg addressed in his testimony. What have you found that to be?

MR. SAMS: Your Honor, I'm going to object to this line of questions. In previous depositions, I [116] understood this witness was not going to testify to any of this. We have not had a chance to cross-examine this witness on this subject, so we think it's out of order.

MS. WILDE: Your Honor, in Doctor Walberg's deposition, he didn't tell me that he was going to come in as an expert on desegregation and achievement either.

MR. SAMS: That wasn't the form of the objection.

THE COURT: What, now? What did you say?

MR. SAMS: I said that wasn't the form of my objection, that she—my objection was that this witness has not—I was led to believe that this witness was not going to testify on this subect matter, and now she's going into an area which I though was going to be outside of the scope of this inquiry.

MS. WILDE: Your Honor, I had no warning that we were going to be talking about the effects of desegregation on achievement. I'm not going to be going into what constitutes learning. I'm simply addressing the same topic addressed by Doctor Walberg, which is the desegregative—the effect of desegregation on learning, and it will not go beyond that topic.

THE COURT: I will overrule the objection.

THE WITNESS: Doctor Walberg said in his deposition that he had reviewed the studies of the effect of desegregation on learning, and he had reached the [117] conclusion from his review—I believe he named some 17 studies—that the effect was negligible, close to nonexistent.

BY MS. WILDE:

Q. Is that your view?

A. And I could not disagree more. I would say rather that there have been many poor desegregation plans, and there have been even more desegregation plans, good or bad, that have been poorly implemented, and those plans have had negligible—or sometimes detrimental effect on learning, so there is a relationship. The relationship can be positive or negative depending on the quality of the plan, depending on whether the plan has educational components in it to begin with; and next, most of the reviews of most of the studies came in an era when educational components were missing from desegregative remedies. In other words, we have grown up over the years, we now

recognize it; if you want to have an effect on student learning, you have to introduce something to have that effect.

Now, that does not mean that there isn't a strategic policy effect on learning from desegregation, and I think that is expressed both in the Brown decision and in the briefs and argument leading up to it; namely, if you equalize treatment and you equalize the distribution of resources, you will lift all boats (sic). There will be a [118] benefit.

Q. To everybody?

A. To everybody. And that benefit will ge beyond social learning. It will penetrate academics. There will be instructional gain. But that's as far as the constitutional concern goes.

Now we come to the question of program in a district; if you want to achieve unitariness, then you take those steps so that learning and desegregation are linked and they are linked to have a positive outcome. In other words, you have programs which will benefit students because they were previously segregated. You eliminate the segregation and you remedy the obstructions that it imposed on their learning opportunities.

I differ with Doctor Walberg in the question of whether that's been done in DeKalb County schools. I think we have abundant evidence that this is a piece of unfinishd business. That's very dramatic, very substantial, jumps out at you, not only in terms of racial balance and identifiability of schools, but on the distribution of resources in the learning environment.

Q. Doctor Dentler, what has your review told you about whether or not DeKalb has met standards in the area you have reviewed on unitary?

A. My reviews told me that some of the things I listed as [119] critically essential to assessing unitariness have never been addressed in DeKalb and that others have barely begun to be addressed; in other words, that students are still distributed, they are assigned to schools

and they attend schools in a manner which is racially separated.

Q. How extreme is that separation?

A. The separation is extreme enough so that it's visible on first flush; from any year, just go in and look at one of the maps and there is a tier of schools in this regard, a hierarchy of schools running from mostly white to mostly black; that that has persisted, it has not been combated; that the changes that have been made in the system to modernize it and to adapt to demographic changes, while significant, have not been harnessed to the engine of desegregation; that these are not just missed opportunities, they have to do with not eliminating racial duality, letting it be there, in the teacher force, in the leadership force, in the student distribution, and in the tools that are employed. I don't just mention the tools because they are nice; I mentioned them because you could achieve racial unitariness in this district by starting to work on it tomorrow or this afternoon.

Q. What are the implications of those tools not being used in the previous 18 years?

A. The implication is that I can't—I can't now, by the [120] way, talk about some things I might do in the future. I have to look at what I have accomplished this far. Am I unitary now? Not next year, but the year after. Am I unitary now? Did I do those things? Are the opportunity costs becoming fairly staggering The answer is yes, and it will be harder to do now than it would have been in 1976, but it's still possible.

Q. Had it been done in 1976, would it have been effective, in your view?

A. Yes, I think that this is a —this is not a gravely underfunded declining central city, like a hundred central cities were in America at that time. This is a burgeoning suburb; this is the sun belt to which Boston families moved. We were busy studying where they were going from Boston; the answer is, they were going to

places like DeKalb County. You have the opportunities, you still have. The suburbanization is still going on.

Q. Have you been able to assess why those tools were not being used during that 10-year period?

A. My impression from the record is that the school board and especially the superintendent, or superintendent, concentrated on preserving the gains that the white constituency had made over the years, that protected—where possible, protected the Type I schools, did not take steps to open those out or to host changing population [121] there, and that they waged battles of attrition in the transition zone, slow adjustments that—not slow adjustments—adjustments were made on the Type II schools, but they sequestered the Type III's. Those were left virtually all black, no action, no remedial actions were mounted, and the idea was, we will put our attention on preserving the white hegemony where we can.

Now, the mistake in that is not only can you not eliminate racial duality that way, but you can't even retain white families that way. That strategy is, in my opinion, one way of facilitating white flight.

Q. Why is that, and what else could you have done to retain the white families?

A. Well, that it's not a policy of inclusiveness, it doesn't bring people together, and white families can see that that policy is going to lose over time as more white families sell their houses and depart. In other words, you have a triggering effect, a dynamic already in place. You have the years of blockbusting behind you, but you still have action ahead of you.

So, the white families don't see what steps are being taken except what I would call a kind of triage: "We will favor our neighborhood schools when we can," and often that's not enough, so people relocate, but a different house in Gwinnett or Rockdale and call it a day. That's [122] the same as achieving white flight.

Q. How would you characterize the district's attitude over that 10-year period or over the 18 years toward the Type III schools, Doctor Dentler?

A. Well, I don't presume anything psychological or I can't assess from a distance the innerworkings of attitudes, but these are the schools that manifestly could be ignored or treated about the same as the other schools, but no extra help. In other words, they would be losing a little bit each year by virtue of having started the race with such a disadvantage in the first place.

Q. By the way, what in your view is the role of projections and plans to the unitary inquiry?

A. I think that they don't do any more than demonstrate that every large—to my knowledge, nearly every large public school system is making forward plans, is anticipating new things to do, have lengthy agendas—it's called improvements, reforms—that you need to cut off point.

When we came to this question in Boston, we had to say, all right, we agree the test year will be 1984, and we don't talk about what the superintendent might do in 1986. I'm not—in other words, I can't make sense out of magnet schools statements where there is no magnet school or program. It doesn't bear—unitariness is a question that [123] deals with past and present action, and those come up against the cut off point. I don't know whether future magnet developments will take place or not.

Q. I had interrupted you. You were giving me the areas in your view where DeKalb has not yet achieved the standards that you had said in your review for unitary.

A. It's racialy imbalanced, it has schools that are extremely isolated racially, that continue to be identifiably black and identifiably white. It has failed to comply even in the broadest interpretation I could make with the single standard on certificated stat (sic). It does not have a Bi-racial Committee which engaged in advising and guiding on desegregated strategies and race relations. It

has an M-to-M program which has done about as much as it can do, which is very little, to desegregate the system. It has the bearest bones beginnings of magnet programs, affecting in my count about 500 students at present, and there are some good ideas going, but they have a very long way to go, and they are in shortfall right now.

So even on my briefest list, this district is segregated and has not offset the vestiges of discrimination as they impact on the child's daily learning experience, and that's the essence of the school treatment. It's not a unitary district, and it's got some exciting good intentions which I have tried to note and honor, but [124] they don't bear on this—they don't bear on this assessment.

MS. WILDE: One moment, Your Honor. (Pause.)

Your Honor, I have no further questions of this witness.

* * * *

[113] BY MS. WILDE:

Q. And you said you are looking at schools. Is that why you used school based racial composition, Doctor?

A. Yes, it is. I didn't go beyond that except to ask that we compute the index of interracial exposure and dissimilarity for historic purposes to see whether it had changed over time.

Q. Do the correlations tell you anything about whether the schools are equal, Dr. Cole? Sorry. Dr. Dentler.

A. Yes. Yes, they did, and they tell it in a language of difference. In other words, as percent black goes up, resource availability goes down. As percent black students goes up, treatment characteristics that are relevant to equal learning opportunities goes down.

That's what I found, and the relationship is distributive. We measured it in terms of differences. It was the different levels of racial composition.

Q. Was there any pattern or system to the patterns of deprivation that you found?

A. Yes. They are consistent across a wide range of disparate measures, measures which aren't correlated with one another as well as measures which are highly intercorrelated and redundant, play out with very few exceptions in the same direction and with the same high magnitude.

[114] The A-Nova Device was introduced simply to cope with the fact that the types of schools we used were not a continuous variable, and that's a statistical package that copes with that fact.

Q. Is it fair to characterize your results as a systematic deprivation of Type Three schools?

MR. SAMS: Your Honor, that's a leading question. I wish she wouldn't do it. Objection.

THE COURT: Don't lead him. Go ahead. Don't lead him. He is your witness. Go ahead.

MS. WILDE: Are you saying the witness should go ahead or should proceed with the question?

THE COURT: The question was asked. If he can answer it, go ahead.

State your question again.

BY MS. WILDE:

Q. Do you have an opinion as to whether or not what you have seen represents a systematic deprivation, and, if so, what is the opinion?

A. Yes, I have an opinion, and the opinion is that the relative deprivations at the school level are systematic. That is, they go across a considerable range of evidence, and that range of evidence bears on different dimensions, different aspects of the DeKalb County Public Instructional Services. They are built in in a variety of respects.

[115] Even when we do not get a significant effect, the effect goes in the direction of the other systematically patterned variables.

Q. You were asked, Dr. Dentler, on cross about teacher experience as I recall.

I would like you to take a look at Plaintiffs' Exhibits 130 and 131 and first tell me whether you have reviewed those.

A. Yes, I am familiar with this.

Q. And what do those exhibits show you, tell you, on the question of teacher experience vis-a-vis racial composition?

A. Well, this is a legitimate but low budget method. Some people would call it a quick and dirty method for assessing whether there are differences in experience levels by percent black students and only using the extremes.

That is, the schools that are zero to 25 percent meaning predominantly white versus the schools that are 75 to 100 percent. But then on the other side breaking out the levels of experience. That is, instead of using all the schools, you just use those in the extremes, but you ask about teachers with less than a year experience meaning the greenhorn beginners, the students with less, I mean teachers with less than three years, meaning the non-tenured, sort of greenhorns, and then the average number of years of teaching which is the more continuous variable.

[116] Q. And what differences do you get on the zero to 25 percent black versus 75 to 100 percent black on the first year or less?

A. For the mainly white schools, the zero to 25 percent black student schools, 13.4 percent of the teachers in those schools have less than a year's experience in contrast to 25.1 percent of the teachers in the predominantly black schools.

Q. And how about less than three years?

A. Less than three years, which is the tenure cut point, the test for competence and permanence, for the mainly white schools, it's 17.4 percent. For the mainly black schools, it's 45.1 percent.

Q. And I believe that's an elementary school exhibit; is that right?

A. These are elementaries, yes.

And then on the high schools using the same two sets, for less than one year, the mean is 10.2 for the mainly white schools and 28.2 percent for the mainly black high schools.

And for less than three years, it's 25.2 for the mainly white schools and 45.7 percent for the mainly black high schools.

So just as we are using the extreme case schools for the tests, the differences between the percentages are [117] very great.

Q. There was some discussion about Main Street, as I recall, on cross-examination. Have you taken another look at Main Street and figured out whether indeed that's a type One school?

A. Yes. One of the mistakes made on listing schools in my typology appears to have been a mistake of a typist.

Q. You are talking about the court exhibit on Knollwood?

A. Right.

Q. So—

A. On Knollwood we made a mistake on typing the court exhibit, but we didn't make that mistake on the data entries.

On Main Street, I spent last night trying to figure out how I got Main Street on my data set when it didn't exist in 1976, and I think the answer is on one of the charts I used I dropped down from another school. I made a visual—I fell off the line, and Main Street did get into my set by error.

Q. When did Main Street open?

A. Main Street opened in 1980.

Q. And what was its percent black at that point? Well, was it majority black at that point?

A. No, it was not. Far from it.

Q. Okay. And is it majority black today?

[118] A. When Main Street opened, it was 2.5 percent black, and in 1986 Main Street was 22 percent black students.

Q. So for those six years it would fit the definition, but indeed it didn't exist in '76; is that right?

A. Yes.

Q. Have you done any review of what the values were for Main Street? Can you tell us what would happen if Main Street weren't included in Type One, Dr. Dentler?

A. Yes, and until I fell asleep from the fatigue of it, I tracked out the values on some ten of the independent variables that were entered for Main Street as mean scores and then compared them with the values for the three types, and what I was doing was determining whether Main Street had, what effect it had, whether it stacked my findings in the direction of a racial affect or worked against it.

Q. And what was your conclusion, Dr. Dentler?

A. The answer is, if you remove Main Street from my set, the differences between the Type One Schools and the other two types became more extreme. That is to say, for example, the per pupil expenditures at Main Street are notably less than they are at some of the other schools.

Q. So it would bring down the average or mean?

A. Yes.

The point is that Type One schools have significantly higher per pupil expenditures, so this was [119] true for average percent black students, for teacher turnover, for the expenditure data for two years, for books per pupil and for years of teaching experience in each of three years, so what I am trying to get at is, it's an error, it's not an error that bent the results in favor of support of the hypothesis.

Q. So your conclusion without Main Street is what?

A. My conclusion without Main Street is that the differences between the Type One schools and the other two types of schools became more extreme.

Q. Can you explain what the potential value of a middle school is for desegregation purposes, Dr. Dentler?

A. The advantage of a middle school is above all that you can reorganize the grades in the system to make a contribution to system wide desegregation. In other words, it's part of redistributing students in order to equalize the school environment.

Secondly, you can introduce a program in the middle schools which helps enhance the learning of black students.

The competition that fits the high school model and therefore the junior high which is preparatory, is reduced. The philosophy in the middle school is to reduce competition as far as possible and to emphasize student cooperation and mutual learning in the clusters that I was [120] describing earlier.

You can carry out that kind of program under other labels, of course.

Q. I believe we went in on cross to your opinion concerning nothing being done to host the black or retain the white students leaving the system.

Can you tell me what, for example, the closing of white schools has to do with that conclusion?

A. The closing of a school in a desegregation district is an important occasion for considering the racial equity of student assignments. In other words, it's a time when you modify boundaries or subdistrict or introduce magnets or transfer incentives.

So when you close a school if you want to close as part of a desegregation strategy, you don't close and then put the students in other nearby schools that are without exception the same race or have been larger proportions of white students, but as far as I could reconstruct it, that's what all the elementary level closings were like after 1970 in the upper half of DeKalb County.

So what you do in effect is close a school as the enrollment declines but make sure the enrollment is located at the nearest available white school so—

Q. And what's wrong with doing that?

A. What's wrong with doing it is that it isn't—it's not [121] a desegregative activity. It offers no relief for the black students on the one hand and for the white students on the other.

It's a signal to the parents that their portion, their stake in the district's constituency is eroding. The have been rummaging around in a half filled school for a time, and now they get assigned to one where the decline for all they know may begin again. It's not a hosting kind of full house strategy.

Q. And what is the problem with building new schools in the black areas for the black students or building additions to black schools in the south?

A. There's nothing the matter with building additions. I despise portables and so does the Georgia State Education Department and the Alabama State Education Department, but we use them. They are a practical necessity.

Apart from the important question of whether portables are used for the racial effect, when you do use them or you add an annex or you build a new school, you have an occasion for further student desegregation, and so you don't just say, "Well, we have enrollment pressure over here. Zip in a portable." You ask, "Well, if we put portables in there, how could that be linked with student desegregation policies at the same time?"

So that the mix changes at the same time, and so [122] in that sense facility provisions are very vital. You can make use of them to make very deep changes in the racial equity of the system.

If you just add annexes or portables to very predominantly black schools, you are just going to increase the likelihood that you continue to have identifiably isolated black schools over time.

Q. We had talked a little bit about the M-to-M value. I would like to show you Plaintiffs' Exhibits 22 through

28 and ask you to just take a look at them and tell me whether these were what you were referring to.

A. Yes. These are the materials which have been distributed to the Bi-racial Committee and out of which I made my record of how many M-to-M students there were in given years.

Q. And your opinion on current level of participation in the M-to-M program is what, Dr. Dentler?

A. My opinion is that it's very close to the ceiling that has been, both been projected and can be accomplished. The potential of this tool which has come to be appreciated by various groups in the district, I gather, is extremely limited. We have taken it as far as or close to as far as it's likely to be able to go.

* * * *

TESTIMONY OF FRANCES PAULEY

* * * *

[147] BY MS. PAULEY:

A. Yes, I guess it was, although we had very little contact with the board. The board—the contact was really through Mr. Renfroe who was our liaison between the Bi-racial Committee and the Board. He had a kind of a rough job there.

BY MS. WILDE:

Q. What kinds of things did you feel that you as a Bi-racial Committee should be considering that there was some disagreement over your role on?

A. Well, one in general. Some of the larger things, I would have liked to have seen us go into how could, what were some other things besides M-to-M, because we had never felt that M-to-M was a really a, any great tool to treat a desegregated school system.

MR. SAMS: Your Honor, she used the word "we," and I still want to make sure—

THE COURT: She's already indicated that there were "you" and "them" and one more that made "you" stronger, so—

MR. SAMS: I didn't know if the die hard segregationists were getting their views—

THE COURT: Well, I think the Court can distinguish between the two.

MR. SAMS: Thank you, Your Honor.

[148] THE COURT: She has just convinced me that I was right, which I always thought I was, when I changed the method of selection for the Bi-racial Committee.

MR. SAMS: Thank you.

THE COURT: She's confirmed to me that what I saw was going on for years, that they were fighting among themselves more than anything else—

THE WITNESS: But truly what was kind of interesting to me in going back over some of the minutes, we agreed or the first votes that we had were unanimous, unanimous, unanimous. I should say the first, oh, I don't know, quite a lot of—and then there was one man who was supposedly on the other side, he got so he always voted on our side, and, I mean, you know, you know, Judge, when, how it is. You think people are always going to be, think this way, but they sometimes fool you and think the other way.

THE COURT: People change.

THE WITNESS. Yes, people change, and with difference ideas that come up.

But some of the things that we had a problem with were things like zone changes, and that was one of our, one of the things that we were supposed to okay, so regularly for four regular meetings, when we first organized, we asked them if there were going to be any zone changes.

Mr. Renfroe said, no zone changes, no zone [149] changes, all four times, which were recorded in the minutes that there was, so we didn't have to worry about zone changes.

Then we heard from a parent in the school district that they were going to close Heritage School which was going to mean that the people at Heritage were going to have, a lot of zone changes were going to have to be made.

So then they said, that didn't matter because those zone changes didn't have any racial effect.

Well, to me, it did have a racial effect. Any closing could have a racial effect then and on the future, so it was something that I thought should be under consideration.

So we didn't hear until the end of May, you see, that they were talking of closing Heritage, and that we did go ask the Judge about that again, and I have forotten. It was quite a long deal. I believe it was open for one more year and then closed or something like that.

BY MS. WILDE:

Q. Did you have any problems getting information from the board?

A. We can never get information, and I never could quite understand why, because the information that we asked for was public information. Like what is the capacity of the schools. What is the number of students enrolled and the [150] breakdown between black and white.

I mean, things that to me that anybody should have been able to walk in the office and say, where do I get them, and somebody would give them to them maybe for the price of fifteen cents a sheet or something, but to give them to them.

So one time I remember we went all fall and we didn't get the list we had asked for until the following—some of the committee members didn't consider this as seriously as I did. I liked to take it and figure with the numbers and figure with the figures and see where we were, and it bothered me very, very much that we didn't have the tools to work with.

It delayed us in getting ahead with the job.

Q. Was the Bi-racial Committee successful in your view in fulfilling its mission?

A. Oh, no, I don't think so.

Q. And why not? What were the problems?

A. I'm sure it did some good, and all of us learned a lot, but as far as increasing desegregation in the county, it didn't.

Q. Why not?

A. I think perhaps we helped in a lot of things. We probably increased the amount of M-to-M because at first they didn't have any transportation policy, and a lot of [151] people didn't want to transfer their kids because it wasn't any written policy, and you know you are not going to send your little first grader out and not know how they are going to get to school.

So we asked for a policy, and we finally had to go to court to get a stated transportation policy for handling M-to-M students, but we did go, we did go back to court, and we did get that policy and did reopen that M-to-M length of time so that that could be publicized.

So I expect we did some things, but I think in the overall picture of providing us with a unitary system in DeKalb, I don't think we got very far.

Q. What kinds of things did you feel like you should have been considering that were not available to the committee?

A. Well, other means like pairing or redistricting or changing, you know, the various things that you have heard the experts talk about that can go into various desegregation plans, because depending entirely on the district, what sort of plans that you could use.

We had a great advantage I thought in DeKalb County because we did have in a way a more homogeneous group, and a lot of the blacks had moved into the county, and I was very astonished and pleased and delighted to see how many of the blacks that were moving in were moving back south.

• • • •

[153] BY MS. PAULEY:

Said, "it is widely held by committe members that the majority-minority program is not and cannot be thought of as the vehicle for desegregating DeKalb schools. Therefore, the committee has continued to urge the school administration and the Board of Education to seek other viable alternatives for desegregation of DeKalb County schools."

I think that was the, a very true statement that he made at that time, and it was adopted, by the way, by the total committee.

BY MS. WILDE:

Q. Were any subcommittees ever formed on the desegregation question?

A. Well, we did set up a task force, but it was actually separate from the Bi-racial Committee, but it was under the Bi-racial Committee, and a member of the Bi-racial Committee served as chairman, but it was made up of people from various organizations around the city.

I wish we had something else like that that could really work hard. I think it would help to have the best school district in the state.

Q. What was the attitude of the court towards the Bi-racial Committee and its role?

A. Well, Judge Edenfield showed such patience with us, because so many times the things that we would go back to court seemed so small, but they all fit into a big picture . . . ,

* * * *

TESTIMONY OF MELVIN JOHNSON

* * * *

[35] BY MS. WILDE:

Q. Of the maintenance department?

A. Yes.

Q. Let's see if there are some other complaints that I think might have been brought to your attention. You would be over Southwest DeKalb, I take it?

A. Yes.

Q. And you would also be over Towers; is that right?

A. Yes.

Q. So you would have been aware of the problem with the band director who said, "This band is being run over by a bunch of niggers," who was then transferred. Are you familiar with that problem?

A. Yes.

Q. And indeed, he was transferred to another black school; he wasn't fired, right?

A. It's my understanding, yes, he was transferred.

THE COURT: Is that band director black or white?

THE WITNESS: He was white.

* * * *

TESTIMONY OF CHRISTINE ROSSELL

* * * *

[133] BY MS. ROSSELL:

A. You mean the 1980 gap versus the 1976 gap?

BY MS. WILDE:

Q. Yes.

A. Right.

Q. Now, let's go back to that chart we had so much trouble with this morning.

I believe we have now established that it's black, black, white, white?

A. That's right.

Q. And let me show you what was marked as Plaintiffs' Exhibit 125 which was a mapping of those differences in terms of the difference between the blacks and the whites.

Do you want to do a quick check as to whether or not you think that's accurate?

A. I can't quite read the handwriting. "Difference between first year students and those"—

Q. "Totally educated in DeKalb County," which is what this chart—

A. Okay, so it's the difference between the total students and the new students coming into the system.

Q. That's right.

A. All right. I have looked at it.

Q. And indeed doesn't that show that between, if you do it by race, that the gap is widening between blacks and the [134] whites, the whites are doing better the longer they are in DeKalb and they are doing much better than blacks who were in DeKalb?

A. Yes.

Q. I believe you testified on direct that nothing would have substantially changed the demographics; is that right?

A. Yes.

Q. And when we discussed that last night, do you recall saying essentially that there may have been ways to affect it, but you really don't know what would have been effective?

A. Yes.

Q. So you don't disagree that there are ways of mitigating white flight?

A. I think that the school system probably could have made minimal, had a minimal effect on that.

Frankly, I don't know what it is, but just as I survey the possibilities, it seems to me that they might have had a minimal effect, but, frankly, I can't—I have to tell you, the research is very interesting on this, because virtually every school system that I can think of that has undergone this kind of massive racial transition has reacted to it the way DeKalb has done. That is, they try to maintain—they try to maintain some stability by not reassigning students and by not gerrymandering. . . .

* * * *

[137] THE COURT: Before you leave that, you were asking a question, Ms. Wilde. Maybe I don't recall it correctly. You were asking questions that suggested that the evidence showed that the magnet program would affect transition.

MS. WILDE: Yes.

THE COURT: I don't remember there being evidence to that effect.

MS. WILDE: Dr. Armor testified that using magnet programs can be used to slow racial transition and if put in a transitional neighborhood could stabilize the area.

THE COURT: Stabiliz[illegible] I was trying to reflect on Dr. Dentler's testimony. He didn't testify to any such, as I recall.

MS. WILDE: I remember much more clearly with Dr. Armor. I'm not sure.

THE COURT: All right.

Do you have any studies that you have that would show that use of magnet schools would slow or have an effect upon the racial transition of neighborhoods?

THE WITNESS: Yes. My research shows the same.

THE COURT: It does?

THE WITNESS: Yes.

BY MS. WILDE:

[138] Q. Let's switch focus to M-to-M.

Did you look at the underlying shifts in the size of a school's population in determining which schools you found significant effect in?

A. I'm not sure I understand that question when you say "underlying size."

Q. When you made a determination as to whether or not M-to-M had had a significant effect in the school, did you look at such factors as whether the school was shrink-

ing during, in its enrollment over the period that you were examining?

A. My understanding—I was given this data by Dr. Bill Strain. My understanding is that this is a snapshot in one point in time, and therefore that issue is irrelevant.

Q. Are you aware that Oak Grove which you named has only about 20 M-to-M students?

A. Well, these data say 52.

MR. SAMS: What year?

MS. WILDE: I have 1986 Oak Grove a total of 47 black students.

THE WITNESS: Well, these data say—this is October of '86, and they say 52.

MS. WILDE: Your Honor, mine's from defendants' Exhibit 35.

THE COURT: It's not the first time we have had [139] inconsistencies or a variable.

Q. Wouldn't you agree that if the size of a school is going down, that if you are looking at percent impact, it's going to take fewer students in order to get a percent impact?

A. Well, if you have a snapshot in time, that is one point in time, that should be irrelevant, because the enrollment is constant at one point in time. You take the M-to-M children out, you put them in their home school. The enrollment does change, so the question is, what is the effect on percent black of those schools at that one snapshot in time.

Q. And if you have a small school, it can be a very small number of M-to-M that do that?

A. Yes.

Q. I think you agreed when we were talking last night that M-to-M has had virtually no effect on the over 90 percent white or over 90 percent black schools; isn't that right?

A. I'm sorry. I thought the question last night was the 90 percent black schools.

Q. Let's start there. You would agree it's had virtually no effect on the 90 percent and over black schools?

A. By themselves, that's correct. However, when you calculate an index, the fact that there are less blacks in [140] those black schools improves racial balance.

Q. But it doesn't affect the percent black in the home schools?

A. No, it doesn't.

Q. You haven't had much of an effect in such schools as Peachtree and Dunwoody or any of the over 90 percent white schools either, have you? I didn't hear a single double digit that was a 90 percent white school.

A. I'm sorry. The name of the school is what?

Q. I'm just saying you have not had significant M-to-M impact in the 90 percent or more white schools either, have you?

A. In the very northern schools.

MR. WEATHERLY: At what point in time are we talking about? October of 1986?

MS. WILDE: '86 is the last point I have got.

MR. WEATHERLY: That's what you are asking the opinion with regard to? Is that October '86?

MS. WILDE: Yes.

THE WITNESS: I don't have Peachtree on my list.

BY MS. WILDE:

Q. Or Austin Elementary or Kingsley?

A. That is correct.

Q. And I believe we also agreed last night that there were ways that the system could be taking additional steps to try [141] to build its M-to-M program?

A. Yes.

Q. So it has not done all it can?

A. Probably not, although most of the growth in M-to-M will simply come about because seats will be made available as the white enrollment declines and word of mouth gets out.

I mean, this is one of those things that just grows and grows and grows.

Q. Only in the black community, right, Dr. Rossell?

A. That's exactly right.

Q. I believe when we were talking about the level of segregation within DeKalb you said the numbers speak for themselves; isn't that right?

A. Yes.

Q. Indeed, are you aware of this morning's paper finding that, where Dr. Toyber said that Atlanta, DeKalb and Fulton are ranked among the top 11 most segregated systems in the country?

A. Unfortunately I didn't read that newspaper article.

Q. Would you disagree with that finding?

A. Well—

Q. As of 1984, as least, which is the data base.

A. The disagreement I have with Carl Toyber is he is still looking at racial balance when he compares school districts.

What I argue is that one should look at [142] interracial exposure. That is, the percent white in the average black child's school.

The reason why I argue that is because whatever research suggests that going to a desegregated school can affect one's life chances uses as their independent variable the percent white, not racial balance.

The problem with racial balance is, first of all, I am not even sure it's by itself an absolutely desirable goal, but secondly, it isn't linked to any of the research that we know of. What does it mean to have racial balance.

So to say that DeKalb County is one of the most racially imbalanced school systems is one thing, but you have to understand that DeKalb County has more interracial exposure than Boston which is a whole lot less racially imbalanced.

Q. And the Supreme Court was addressing some questions of racial balance in Brown and its progeny?

A. Well, it is not clear what they were discussing in Brown, quite frankly.

In Swann, they began to discuss racial balance, but if you read those decisions carefully, and I have read many of them, it seems to me what they are really driving at is white-black contact rather than strict racial balance, that they would not find desirable a school system in which there were 97 schools and one white in each school which [143] would be perfect racial balance.

Q. Would they find desirable a situation where 50 percent of the black kids go to over 90 percent black schools?

A. Well, they have in many schools sytems. Houston, for example, Atlanta. The court—the Philadelphia Magnet School Plan, for example, which Dr. Dentler testified was a failure, in fact, I have actually measured that plan with precise mathematical measures, and I count it as a hugh success.

I don't know of a school system that began at such a high percentage minority with such a big increase in interracial exposure as a function.

Q. Let's talk about DeKalb County in magnets and interracial exposure.

Your testimony was it only makes—even including all of the integrated experience programs which you listed and Kittridge which is not yet open, all we had was a one and a half percent shift in racial exposure, right?

A. It's a one and half to three and a half percent decline in racial imbalance, the various racial imbalance measures.

Q. Indeed, we agreed in your deposition, did we not, that DeKalb is at the very beginning on the magnet program?

A. That's correct.

Q. And you said, as I recall, that it would take ten to 30 percent of the students in magnet schools to have any [144] significant impact on the level of segregation in DeKalb County?

A. Now, that's based on my own research.

Q. Which you said is about the only research in the field?

A. That's exactly right. You won't find anything about how many kids are in magnet seats in Dr. Dentler's study. There is literally no data in that study.

Q. So we can use the ten to 30, Dr. Rossell?

A. This is based on 20 other school districts. Obviously, you take that data and you look very carefully at DeKalb County, and I have not done that.

Q. You did agree, however, that we could make a dent in DeKalb County if we moved to a serious magnet program?

A. I think you could reduce racial imbalance.

Q. And you agree it would be a good idea both educationally and for desegregation?

A. Yes.

Q. You have never testified before in a unitary hearing, have you?

A. No.

Q. We talked about level of segregation, M-to-M not affecting the 90 percent black schools or some of the northern white schools and magnet programs being at the very beginning. You are not contending that DeKalb County as we stand here today is unitary, are you?

* * * *

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No. 89-1290

IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

ROBERT R. FREEMAN, *et al.*,
Petitioners,

v.

WILLIE EUGENE PITTS, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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QUESTIONS PRESENTED

1. Whether a formerly *de jure* dual school district, which achieved effective desegregation in student assignments in 1969 by closing its black-only schools and adopting a court-ordered neighborhood school plan, which it has faithfully adhered to, is nevertheless obligated to remedy the segregative effect of massive demographic changes that occurred over the past 22 years and that were completely beyond the school district's control.

2. Whether a school district operating under a 22 year old desegregation decree is barred from obtaining release from federal court supervision of student assignment policies solely because other aspects of the school district's operations, such as faculty assignments, have not simultaneously achieved and maintained racial balance for a period of three years.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISIONS INVOLVED	2
STATEMENT	2
Pre-Litigation Action By DCSS	2
The Implementation of the 1969 Desegregation Plan	3
Shifts In Residential Housing Patterns	5
Judicial Response to Changing Demographics (1975-86)	7
The 1986 Motion to Dismiss	13
The Eleventh Circuit Decision	18
SUMMARY OF ARGUMENT	19
ARGUMENT	23
THE COURT OF APPEALS ERRED IN ORDERING PETITIONERS TO REMEDY RACIAL IMBALANCE IN STUDENT ASSIGNMENT CAUSED SOLELY BY DEMOGRAPHIC CHANGES BEYOND THE CONTROL OF PETITIONERS	23
A. Federal Judicial Authority To Remedy Racial Imbalance In Any Facet Of School Operations Must Be Causally Linked To The Prior Unconstitutional Conduct Of The Relevant State Actors	24

TABLE OF CONTENTS—Continued

Page

B. The Court Below Erred In Ordering Petitioners To Undertake Massive Additional Efforts To Obtain Racial Balance In Student Assignment When Existing Imbalances Could Not Be Attributed To Petitioners' Prior Unconstitutional Conduct Or Subsequent Acts 28

C. The Theories Advanced By The Eleventh Circuit Provide No Support For Extending Federal Judicial Supervision Over Student Assignment In DCSS Once Racial Imbalance Attributable To State Action Has Been Eliminated 37

CONCLUSION 47

TABLE OF AUTHORITIES

CASES

Page

Armour v. *Nix*, 448 U.S. 908 (1980) 12
Board of Educ. of Oklahoma City v. *Dowell*, 111 S. Ct. 630 (1991) 20, 27, 29, 42, 46
Brown v. *Board of Educ.*, 349 U.S. 294 (1955) 24, 27, 31
Dayton Bd. of Educ. v. *Brinkman*, 433 U.S. 406 (1977) 25
Dayton Bd. of Educ. v. *Brinkman*, 443 U.S. 526 (1979) 30
Estes v. *Dallas NAACP*, 444 U.S. 437 (1980) ... 35
Flax v. *Potts*, 915 F.2d 155 (5th Cir. 1990) 40, 41
Green v. *County School Bd.*, 391 U.S. 430 (1968) *passim*
Keyes v. *School Dist. No. 1, Denver, Colo.*, 895 F.2d 659 (10th Cir. 1990), *cert. denied*, 111 S. Ct. 951 (1991) 40
Keyes v. *School Dist. No. 1, Denver, Colo.*, 413 U.S. 189 (1973) 38
Milliken v. *Bradley*, 418 U.S. 717 (1974) 19, 24, 25
Milliken v. *Bradley*, 433 U.S. 267 (1977) ..... *passim*
Morgan v. *Nucci*, 831 F.2d 313 (1st Cir. 1987) 40
Pasadena City Bd. of Educ. v. *Spangler*, 427 U.S. 424 (1976) ..... *passim*
Pitts v. *Cherry*, 598 F.2d 1005 (5th Cir. 1979) 10
Pitts v. *Freeman*, 755 F.2d 1423 (11th Cir. 1985) .. 13
Price v. *Denison Indep. School Dist.*, 694 F.2d 334 (5th Cir. 1982) 30
Raney v. *Board of Educ. of Gould School Dist.*, 391 U.S. 443 (1968) 4, 30
Ross v. *Houston Indep. School Dist.*, 699 F.2d 218 (5th Cir. 1983) 47
Singleton v. *Jackson Mun. Separate School Dist.*, 419 F.2d 1211 (5th Cir.), *vacated*, 396 U.S. 226 (1969), *rev'd*, 396 U.S. 290 (1970) 16
Swann v. *Charlotte-Mecklenberg Bd. of Educ.*, 402 U.S. 1 (1970) ..... *passim*
United States v. *Jefferson County Bd. of Educ.*, 380 F.2d 385 (5th Cir.) (en banc), *cert. denied*, 389 U.S. 840 (1967) 4

TABLE OF AUTHORITIES—Continued

	Page
United States v. *Overton*, 834 F.2d 1171 (5th Cir. 1987)	27, 39, 40, 41
United States v. *Wilcox County Bd. of Educ.*, 494 F.2d 575 (5th Cir.), *cert. denied*, 419 U.S. 1031 (1974)	16
Washington v. *Davis*, 426 U.S. 229 (1976)	30
Youngblood v. *Board of Pub. Instruction*, 448 F.2d 770 (5th Cir. 1971)	41
STATUTES	
28 U.S.C. § 1254(1)	1
1945 Ga. Laws 398, *repealed by*, 1985 Ga. Laws 1657	2
U.S. Const. amend. XIV	2

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-24a) is reported at 887 F.2d 1438 (11th Cir. 1989). The district court's memorandum opinion and order of June 30, 1988 (Pet. App. 25a-72a) is not reported.

JURISDICTION

The opinion of the court of appeals was entered on October 11, 1989. Pet. App. 1a-24a. Rehearing was denied on November 13, 1989. Pet. App. 83a-84a. The petition for a writ of certiorari was granted on February 19, 1991. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the Constitution of the United States provides, in relevant part, that:

> No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV.

STATEMENT

DeKalb County, Georgia is a predominantly urban and suburban region adjacent to Atlanta with a population of more than 450,000. Pet. App. 38a.[1] The DeKalb County School System ("DCSS") is the largest school system in the State of Georgia, serving almost 80,000 students in more than 90 schools. Pet. App. 3a.[2] Prior to the 1966-67 school year, the DCSS, pursuant to state law requirements had maintained separate and overlapping attendance areas for black students and white students. Tr. Vol. V, p. 162.[3]

Pre-Litigation Action By DCSS: Beginning with the 1966-67 school year, the DCSS—prior to the initiation of any litigation—replaced its race-based school attendance zones with a system of geographic attendance zones in which every student, regardless of race, was assigned to

[1] A map of DeKalb County and the surrounding area has been provided for the convenience of the Court. See App. *infra* 1a. The DCSS serves all students residing in DeKalb County except for those living within the Atlanta and Decatur city limits.

[2] The most recent data available to the parties, as of September, 1990, show that the student population is comprised of 61% black students. Hispanic and Oriental students comprise an additional 7% of the student population.

[3] Until it was amended in 1976, Article VIII, Section 1, Paragraph 1 of the Georgia Constitution of 1945 expressly provided that "[s]eparate schools shall be provided for the white and colored races." State statutes also mandated racial segregation in education. See 1945 Ga. Laws 398, *repealed by*, 1985 Ga. Laws 1657 ("Colored and white children shall not attend the same schools").

a single neighborhood school. Every student also was given a "freedom of choice" transfer option, which permitted the student to transfer to any school in the county. Tr. Vol. V., p. 162. Although this system resulted in significant numbers of black children attending formerly *de jure* white schools,[4] it had "no significant impact on the former *de jure* black schools." Pet. App. 33a.

The Implementation of the 1969 Desegregation Plan: On May 28, 1968, this Court announced its decision in *Green* v. *County School Bd.*, 391 U.S. 430 (1968), holding that adoption of a "freedom-of-choice" student assignment plan which failed to eliminate the effects of the dual school system did not satisfy a school board's obligation to remedy state-imposed segregation. On the heels of that decision, respondents filed this action on behalf of all black school children in the District, alleging that the DCSS operated an illegally segregated school system. Pet. App. 26a; see *Pitts* v. *Cherry*, Complaint, No. 11946, at ¶ 9-10 (N.D. Ga. July 5, 1968), J.A. 44. In response, the DCSS immediately and "voluntarily undertook to work with the Department of Health, Education and Welfare (HEW), to develop a . . . plan of desegregation." Pet. App. 26a; J.A. 61. On June 12, 1969, less than one year after the filing of the complaint, after full briefing and hearings, the District Court, with the agreement of all parties, entered an order designed "to be a final and 'terminal,' plan of desegregation." Pet. App. 73a; see J.A. 61.

With respect to student assignment, the district court followed the geographic zoning approach urged by the

[4] In the 1968-69 school year, DCSS voluntarily closed one of its two previously *de jure* black high schools and reassigned those students to the formerly all white schools in their neighborhoods. Tr. Vol. I, p. 131. Thus, in that school year, 37 percent of DCSS's black elementary students were attending previously *de jure* white elementary schools and 69 percent of the black high school students were attending previously *de jure* white high schools. Def. Ex. 193.

plaintiffs and HEW and suggested by this Court's decisions in *Green*, 391 U.S. at 442 n.6 and *Raney* v. *Board of Educ. of Gould School Dist.*, 391 U.S. 443, 448 (1968). The order included three crucial provisions: (1) all the *de jure* black schools from the old dual system were closed; (2) the system of neighborhood attendance zones which had been recommended by HEW was created; and (3) the "freedom of choice" system was abolished and replaced by a strict neighborhood attendance policy designed to prevent white school children from avoiding desegregation by attending schools outside of their home school zones. Thus, far from adopting a "step at a time" plan, *cf. Pasadena City Bd. of Educ.* v. *Spangler*, 427 U.S. 424, 435 (1976), the 1969 order directed the DCSS immediately to desegregate all grades, "including kindergarten," and to assure that pupils be "assigned to schools in these grades without regard to race or color." Pet. App. 77a-78a.[5]

The district court's order was implemented without opposition. Only two of the 92 schools which opened after implementation of the 1969 order had majority black student populations, and there is "no evidence that these

[5] The 1969 order addressed all areas of school operations, including student assignment; school construction; faculty and staff hiring, assignment and dismissal; services, facilities, activities and programs; reporting requirements; and school equalization. Pet. App. 77a-82a; J.A. 64-70. In fact, much of that order was taken from a "form" desegregation order in *United States* v. *Jefferson County Bd. of Educ.*, 380 F.2d 385, 390-96 (5th Cir. 1967) (*en banc*), *cert. denied*, 389 U.S. 840 (1967). Because of the wholesale adoption of the *Jefferson* form order, some of the provisions of the 1969 order bore no relation to the DCSS. For example, the section entitled "School Equalization," (Pet. App. 81a-82a; J.A. 69), refers to "Inferior Schools," which are identified as "schools heretofore maintained for Negro Students." This provision of the form order, designed to remedy conditions in "holdover" or "remaining" one-race black schools (see *Jefferson*, 380 F.2d at 393-94), was irrelevant because the DCSS had closed *all* one-race black schools.

schools [were] a vestige of the dual system." Pet. App. 36a; Def. Ex. 193.[6] Following implementation of the order, the district court retained jurisdiction of the case and no appeal was taken.

This school assignment remedy—closing the *de jure* black schools and adopting a strict neighborhood student assignment system—was appropriate and available to the district court because the DCSS in 1969 was a large school district with 98 schools and with a relatively small black student population. Def. Ex. 193. Moreover, the black students were geographically dispersed throughout the district and could readily be accommodated in the former white schools. The sweep of the district court's remedy permitted the DeKalb School District to avoid the intractable problem of "holdover" *de jure* black schools, which white students would have been reluctant to attend, that plagued many other districts in the South in their attempts to desegregate.

Shifts In Residential Housing Patterns: In 1955, the DCSS had 30,019 students, of whom 2,781, or 9.26 percent, were black. Def. Ex. 193. Although the DCSS's

[6] As of 1969, the overall student population in the DCSS was 94.4% white and 5.6% black. J.A. 62. Fifty-nine DCSS schools opened in the fall of 1969 with less than 3% black student populations, 8 with 3-7%, 5 with 7-11%, 5 with 11-15%, 7 with 15-20%, 2 with 20-25%, 3 with 25-30%, and 1 with 30-35%. Def. Ex. 193. Stoneview Elementary and Terry Mill Elementary opened with 53% and 76% black student populations respectively. Pet. App. 36a-37a.

Terry Mill was located in the westernmost part of the district adjacent to the City of Atlanta and was the first of the formerly *de jure* white schools to experience racial transition. During the 1968-69 school year, the student population was approximately 50% white and 50% black. Pet. App. 36a-37a. Stoneview was in a stably integrated, more rural area in the southeastern part of the district and remained racially balanced thereafter. For most of the period between 1969 and 1986, Stoneview had a majority white population (Def. Ex. 193); "in the 1986-87 school year, according to plaintiffs' evidence," the student population of the school was 53% black. Pet. App. 37a.

black student population has increased every year since 1955, the district also experienced significant growth in its white population between 1955 and 1965, resulting in a doubling of the total student population to 71,577 in 1965, of which black students comprised 4.77 percent. Throughout the 1950's and 1960's, the relatively small black population within the DCSS attendance area was generally dispersed. "In 1970, there were 7,615 non-whites living in the northern part of DeKalb County and 11,508 non-whites living in the southern part of the county." Pet. App. 38a; Tr. Vol. I. pp. 38-39.[7]

Beginning in the early 1970's, however, changing demographic patterns caused the white student population of the DCSS to begin to decline relative to the black student population, particularly in the southern part of the County. Among other factors, the southern part of the County experienced a massive influx of black families, largely from the City of Atlanta. "Between 1975 and 1980, approximately 64,000 black citizens moved into southern DeKalb County," while, at the same time, 37,000 white residents of the District moved away. Pet. App. 38a.

The result of this enormous demographic shift was a large concentration of black families in the neighborhoods of southern DeKalb County. This population shift was "one of the largest and most rapid" that petitioners' demographics expert had ever observed. Testimony of William A. V. Clark, Tr. Vol. I, p. 63; see also Tr. Vol. X, p. 41 (respondents' expert's discussion of "tremendous" demographic shifts in this time period). The district

[7] This evidence came from Atlanta Regional Commission data, which at the time was reported in "white" and "non-white" categories. The evidence revealed that during the early seventies, blacks constituted the vast majority of the "non-white" population in the County. William A. V. Clark, Tr. Vol. I, p. 39.

court found that these demographic changes were:

> the result of suburbanization, that is, work opportunities arising in DeKalb County as well as the City of Atlanta, which attracted blacks to DeKalb; the decline in the number of children born to white families during this period while the number of children born to black families did not decrease; blockbusting of formerly white neighborhoods leading to selling and buying of real estate in the DeKalb area on a highly dynamic basis; and the completion of Interstate 20, which made access from DeKalb County into the City of Atlanta much easier.

Pet. App. 44a-45a. Based on all of the evidence relating to these demographic changes, the district court found that:

> The rapid population shifts in DeKalb County were not caused by any action on the part of the DCSS. . . . There is no evidence that the school system's previous unconstitutional conduct may have contributed to this [residential] segregation.

Pet. App. 44a-45a. Having presented no contradictory evidence in the district court, respondents conceded this finding in the court of appeals.

Judicial Response to Changing Demographics (1975-86): In 1975, respondents, for the first time since the entry of the desegregation plan, returned to the district court to challenge certain changes in school attendance zones incident to the opening of a new school and the adequacy of petitioners' efforts to reassign staff in accordance with the 1969 order. Pet. App. 26a n.1, see J.A. 71. In addition, the DCSS had acted, without court intervention and in response to the decision in *Swann* v. *Charlotte-Mecklenberg Bd. of Educ.*, 402 U.S. 1, 26 (1970), to further racial balance in student assignment by instituting a majority-to-minority transfer ("M-to-M") program. The M-to-M program allowed a student to attend school outside his geographic zone provided he transferred from a school in which his race was in the majority to one

in which his race was in the minority. J.A. 73. In response to this development, respondents, in their 1975 motion, asked the Court to order certain modifications in the operation of the M-to-M program to increase its desegregative effect. Among other things, respondents asked the DCSS to liberalize the M-to-M rules to make more schools available for student transfers and to provide free transportation for M-to-M transfer students. See Order (11/3/76), J.A. 71.

Upon review of respondents' evidence, the district court found it "impossible to determine . . . to what extent changes in the racial composition of the [elementary] schools was affected by changes in the racial composition of the residential areas encompassed by these schools." Order (11/3/76), J.A. 78; see J.A. 79 (high schools). Thus, while the court initially expressed modest concern about the effects of attendance zone changes on the rapid demographic shifts in the southern part of the district, (J.A. 89-91), the court ultimately concluded that "it cannot be said that [DCSS's attendance zone changes] were constitutionally impermissible" and no alteration in the attendance zones was ordered. J.A. 90.

The court also addressed the issue of teacher assignments, finding that the DCSS had "more than complied with" the requirements of the 1969 order. J.A. 84. However, the court ordered petitioners to take further action so that the racial composition of teaching staffs at all schools would be substantially similar to the system-wide ratio. J.A. 86. On the issue of equality of educational opportunity in the DCSS, the court found that DCSS was distributing "reading and math resources, such as specialists and paraprofessionals," to a higher degree in its predominantly black schools than in its predominantly white schools. J.A. 74-75. With respect to other measures of educational opportunity such as "number of library books, average number of years of staff education and experience, and pupil expenditures for staff per individual

school," the court found that there was "no apparent trend of superiority among any group of schools" in the DCSS. J.A. 75.

Finally, the court concluded that it would require petitioners to adopt the "revisions" to the M-to-M program demanded by respondents "so that the program will . . . help[] eliminate the vestiges of a dual school system in DeKalb County," J.A. 84.[8] In order to assist in oversight of the remaining issues, the court appointed a bi-racial committee to oversee "the M-to-M program and . . . proposed attendance zone changes or school site purchases." J.A. 94.

Between 1977 and 1979, the district court dealt with surprisingly few requests for any adjustments in the basic plan, and these requested changes for the most part involved modifications of the M-to-M program, proposed by the parties or the bi-racial committee, or other housekeeping matters. For example, the court, in an order entered January 23, 1977, granted some of respondents' requests to modify the M-to-M program. J.A. 96-97. Several months later, on April 18, 1977, and May 6, 1977, the court issued orders dealing with deadlines for signing up for the M-to-M program and the operation and makeup of the bi-racial committee. J.A. 97-103.

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[8] The court did not identify the "vestiges" to which this passage refers. In fact, the November 3, 1976 order of the district court does not identify anything which can fairly be characterized as a "vestige" of the old dual attendance system in the area of student assignment. Both the respondents and HEW at the time—like respondents in the court of appeals below—had raised the argument that DCSS had an affirmative duty to prevent the emergence of racial imbalance in student populations that was the result of the dramatic demographic changes taking place in the district. In the court below, respondents often referred to this imbalance based upon demographic shifts as the " 'vestige' of resegregated schools." See, *e.g.*, *Brief for Plaintiffs/Appellants*, Nos. 88-8687 & 88-8775 (March 15, 1989, 11th Cir.) at 25. It is possible that this was the "vestige" to which the district court was referring in 1976.

On October 6, 1977, the district court approved, over the bi-racial committee's and respondents' objections, petitioners' proposed attendance zone changes in connection with the expansion of Flat Shoals Elementary School. In so ruling, the court observed:

> The naked fact is that the school population in the entire southern portion of DeKalb County is growing and its racial composition is going black by leaps and bounds. . . . [T]he main interest and emphasis of the black residents in this area is not so much for an exact racial balance as for quality education. By their own testimony they are presently getting quality education. By all accounts, the DeKalb County school system is said to be the best in the state and perhaps one of the best in the nation. This did not just happen. Much credit for the situation must be given . . . to an able and effective school board and school administration who, despite some possible shortcomings, are trying to obey the law.

J.A. 110.

In May, 1978, the district court approved petitioners' proposal to convert Heritage Elementary School to a special education center and to construct eight additional classrooms at Flat Shoals Elementary to relieve overcrowding. See Order (5/23/78), J.A. 126. The court later rejected respondents' request to reconsider its ruling with respect to the Flat Shoals addition. Order (9/6/78), J.A. 131. The court, however, did modify the M-to-M rules to require parents of kindergarten students wishing to have their children participate in the M-to-M program to provide their own transportation. *Id.* at 129-30.[9]

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[9] The court refused petitioners' request to exclude special education students from the M-to-M program, noting that only one special education student had sought to enroll in the program during the previous year. *Id.* at 131. Respondents appealed the ruling relating to transportation of M-to-M transfers at the kindergarten level to the Fifth Circuit, which affirmed the district court. *Pitts* v. *Cherry*, 598 F.2d 1005 (5th Cir. 1979), J.A. 133.

In its May 8, 1979 order, the court denied a motion brought by petitioners, at the request of the bi-racial committee, to respond to the phenomenon of "white flight" by imposing an "antitipping" ceiling of 26% for the M-to-M program. Order (5/8/79), J.A. 150.[10] The court, following a review of the demographic transition that had occurred in the previous ten years, denied the requested modification of the M-to-M program based on the absence of evidence of any "significant tie between the M-to-M program as it presently exists and the rapid racial transition occurring in certain of the county's schools." J.A. 145. Rather, the court reiterated its finding that the racial transition in the schools "appears instead to have resulted from changes in neighborhoods where blacks are moving in and whites are moving out." *Id.*[11]

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[10] Tipping was described as the phenomenon of schools "already in the path of natural integration as a result of housing patterns to 'tip' and become predominantly black schools." Order (5/8/79), J.A. 141. The "tipping point" was defined as the point at which the percentage of black students in a school would accelerate white flight from that school. The bi-racial committee believed that the tipping point for the DCSS was 26 percent—the overall percentage of black children in the system at that time. J.A. 141. Therefore, the bi-racial committee adopted a resolution seeking to amend the M-to-M plan so that "[w]hen a school's student population exceeds 26% black . . ., that school shall not be eligible to receive any additional M-to-M transfers." J.A. 139.

[11] In 1972, a class action was filed seeking inter-district relief in all of the public school systems in the greater metropolitan Atlanta area, including the DCSS. *Armour* v. *Nix* No. 16708 (N.D. Ga.). The plaintiffs in that case contended that "school officials of the defendant counties [including the DCSS] and cities have, in conjunction with other governmental officials, been instrumental in the creation of housing patterns which have, in turn, furthered a condition of segregation in the schools today." *Armour* v. *Nix*, Order (3/2/78), at 2. However, the three-judge court assigned to the *Armour* v. *Nix* case confirmed the uniform findings of the courts below in this case and held that "[t]o the extent that [residential] racial patterns persist, they are currently in existence

In 1984, following the transfer of the *Pitts* v. *Cherry* [12] case from Judge Edenfield to Judge O'Kelley, respondents returned to the district court seeking to enjoin "the DCSS's proposed expansion of predominantly white Redan High School" on the ground that such expansion would have a segregative effect. Pet. App. 8a.[13] Following a hearing on the respondents' preliminary injunction motion, the court ruled that petitioners could proceed with the planned expansion. In the course of its ruling, the district court noted that "[i]n 1969 the DeKalb County School System was converted from a dual to a unitary school system." Order (2/22/84), J.A. 162. Thus, because the proposed addition was an appropriate solution to "a unique problem" and would have the beneficial effect of reopening the school to M-to-M transfers, the court found that "the school board's decision to build

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because of personal preference and economic constraints." Order (9/24/79) at 33. In particular, the court found that:

> the evidence shows that when the factors that influence choice of residence (economic, personal preference, etc.) have so indicated, people will move into any part of metropolitan Atlanta they desire. In the absence of such factors, neither obstruction nor encouragement by government seems to achieve significant results.

Id., at 22. Thus, the court concluded that the DCSS had not engaged in any conduct contributing to residential segregation. Order (9/24/79) at 32. On appeal to this Court, the holding of the three-judge court in *Armour* v. *Nix* was summarily affirmed. See *Armour* v. *Nix*, 448 U.S. 908 (1980).

[12] On August 25, 1983, the case was restyled *Pitts* v. *Freeman* to reflect the identity of existing DCSS officials.

[13] Redan High School had become severely overcrowded. On three occasions the school board had attempted unsuccessfully to secure the approval of the bi-racial committee to construct a new high school to relieve this overcrowding. Because contiguous rezoning of existing schools would have been segregative in effect and would only have been a partial solution to the problem, the DCSS proposed building a new school to house the seventh and eighth grades within the original Redan attendance zone. Order (2/22/84), J.A. 164-65.

the addition to Redan was not motivated by unlawful racial considerations" and "was not unconstitutional." J.A. 168.

On appeal, a panel of the Eleventh Circuit reversed, holding that the district court erred in declaring the DCSS to be unitary without following the established procedure of providing respondents with notice and a hearing on that issue. *Pitts* v. *Freeman*, 755 F.2d 1423 (11th Cir. 1985), J.A. 179. On the precise issue of the proposed Redan expansion, the court of appeals held that it would remand to the district court to "examine the segregative and desegregative effects of the defendants' actions . . . ." J.A. 182. Any inquiry into discriminatory intent "would be appropriate only after a finding of full unitary status." J.A. 179-80. On remand, the district court reaffirmed its previous decision on the ground that "the long term effects of [petitioners'] plan will be to increase desegregation, [while respondents'] plans will increase segregation in the long run." Order (10/31/85), J.A. 199. Respondents did not appeal from this ruling.

The 1986 Motion to Dismiss: On January 16, 1986, petitioners filed a motion in the district court for a declaration that the DCSS had achieved unitary status and for final dismissal of the case. Pet. App. 27a.

Petitioners assumed the burden of showing that they had dismantled the dual system, taken steps necessary to eliminate any lingering effects of that dual system, and avoided any actions tending to reestablish the *de jure* dual system. Respondents did not contest the fact that petitioners had "achieve[d] unitary status" in the areas of physical facilities, transportation or extra-curricular activities (Pet. App. 59a); nor did respondents contest that petitioners had "fulfilled their constitutional obligation" with respect to the hiring and retention of minority professional staff (including faculty and administrators). Pet. App. 48a. Although these issues were not contested, petitioners nevertheless presented evidence and the dis-

trict court made appropriate findings in each of these areas. See, *e.g.*, Pet. App. 49a.

Respondents, however, opposed dismissal on the grounds that petitioners had not fulfilled their obligations with respect to (1) maintaining racial balance in the assignment of students and (2) the assignment and distribution of professional staff. They also contended that dismissal was unwarranted, because petitioners "have racially skewed the provision of . . . educational resources, resulting in unequal educational opportunity for blacks" within the DCSS. Pl. Trial Brief at 19.

Following extensive discovery and a three-week trial, the court found—and the respondents conceded—that with respect to student assignment, "the closing of the black schools in 1969 did, for a time, result in the desegregation of the schools of DeKalb County." Pet. App. 33a; see *id.* at 35a (Respondents "concede that this action" of closing the *de jure* black schools and implementing a neighborhood school plan "effectively desegregated the DCSS for a period of time"). Respondents also conceded that the subsequent racial imbalance in certain DCSS schools was "the result of demographic shifts" in the population of the county. *Id.* at 34a.

However, because "there was insufficient evidence presented about how long the school system remained relatively desegregated before demographic changes had the effect of resegregating certain schools," (Pet. App. 37a) the district court was unwilling to conclude that the "dramatic effect [of] the implementation of the June, 1969 order" by itself constituted a complete remedy for student assignment. *Id.* at 46a. Accordingly, the court examined the actions of the DCSS "over the last two decades" to determine whether any of these actions had contributed to the segregated conditions in the school system. Pet. App. 37a.

The court carefully analyzed the question whether the petitioners had done everything they could to "achieve

maximum practical desegregation" of the student population. Pet. App. 44a; see Pet. App. 41a-48a. Although petitioners had not "implement[ed] *all* programs" that were conceived (in hindsight) by respondents' expert to combat resegregation, the court found that DCSS had not "neglected its constitutional duty to eradicate the vestiges of the former dual system." Pet. App. 46a (emphasis added). Rather, the court found that "the segregation that occurred in DeKalb County would have taken place at approximately the same speed whether or not [petitioners] had implemented the desegregative tools described by [respondents]." Pet. App. 46a.[14]

In sum, with respect to student assignment, the district court found that:

> The DCSS has become a system in which the characteristics of the 1954 dual system have been eradicated, or if they do exist, are not the result of past or present intentional segregative conduct by [petitioners] or their predecessors.

Pet. App. 47a. Thus, the court concluded that petitioners "have fulfilled their constitutional obligations in this area" and the DCSS should be declared unitary with respect to student assignment. *Id.* at 47a-48a, 71a.

With regard to the other factors set forth in *Green* v. *County School Bd.*, 391 U.S. 430 (1968), the district court found that the "DCSS is a unitary system with

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[14] The court specifically found that no conduct by petitioners contributed in any way to the "rapid population shifts" that resulted in the racial imbalance in the schools. Pet. App. 44a-45a. Nor did the court find any evidence that "the actions of the DCSS in any way promoted" or exacerbated the racial imbalance of the schools. Pet. App. 46a. To the contrary, the court found that petitioners had "achieved a degree of success" in maintaining a level of racial balance through the various programs and reforms adopted through the years. *Id.* at 45a-46a. Based on the evidence as a whole, the court concluded that "the DCSS has done everything that was reasonable under the circumstances to achieve maximum practical desegregation in DeKalb County." Pet. App. 44a.

regard to the areas of . . . transportation, physical facilities, and extra-curricular activities." Pet. App. 71a. However, the court stated that existing percentages of minority faculty and staff in certain schools were out of "substantial compliance" with the so-called "*Singleton* requirement" that the ratio of white to black professional staff in the individual schools be the same as the systemwide ratio.[15] Noting that the racial distribution of staff in the DCSS was very close to the 15 percentage point variance the court considered appropriate, and could be brought into compliance with that statistical standard with little effort, the district court ordered the petitioners to reassign faculty to achieve the necessary balance. Pet. App. 58a-59a, 71a.[16]

The district court also noted respondents' evidence that there was a "statistically significant" difference in the distribution of certain of the educational resources. Pet. App. 65a-66a.[17] Although the district court did "not find

[15] In fact, *Singleton* v. *Jackson Mun. Separate School Dist.*, 419 F.2d 1211 (5th Cir.), *vacated*, 396 U.S. 226 (1969), *rev'd*, 396 U.S. 290 (1970) does not require maintaining school staffs within any particular range of racial balance; "rather, it 'contemplates an initial reassignment so that the racial ratio at every school reflects the systemwide ratio, followed by the utilization of a nondiscriminatory hiring, firing and assignment policy thereafter.'" Pet. App. 58a, quoting *United States* v. *Wilcox County Bd. of Educ.*, 494 F.2d 575, 579 n.2 (5th Cir.), *cert. denied*, 419 U.S. 1031 (1974).

[16] Blacks comprised approximately 27% of the faculty for the 1986-87 school years. For that year, six schools had between 40% and 47% black faculties. All of the rest of the schools had between 13% and 40% black faculties. Pet. App. 52a-53a. Since 1969, no DCSS school has had a majority black faculty.

[17] The court referred to evidence that in "type I" schools (which had been majority white over the last decade), expenditures per pupil were $2,833. Pet. App. 70a. In "type II" schools (which have undergone a transition from majority white to majority black over the last decade), expenditures per pupil were $2,540. *Id.* In "type III" schools (which had been majority black over the last decade),

convincing the [respondents'] evidence" that any such imbalance in resources "affect[s] students' learning potential," Pet. App. 67a, it held that a showing of effect on "learning potential" was irrelevant and that a "previous dual system has an additional burden of assuring that any school predominantly attended by minority students is given the same, if not superior, resources." *Id.* Thus, while the court explicitly declined to find that "the DCSS has been negligent in its duties to implement programs to assist black students," *id.* at 69a,[18] it ordered the DCSS to "attempt to equalize per pupil expenditures among the types of schools during the 1988-89 school year." Pet. App. 72a.

Thus, the district court denied the petitioners' motion to dismiss the case in its entirety. Instead, the court held that petitioners would be required to "comply" with the court's specific criteria for faculty assignment and resource allocation before the court would declare that the school system had achieved unitary status with respect to all of the *Green* factors and that the court was therefore divested of jurisdiction. Pet. App. 71a, 72a.[19]

expenditures per pupil were $2,492. *Id.* This "typology" of schools according to their racial characteristics over the past ten years was a creation of respondents' expert; DCSS does not categorize schools according to the racial composition of their student bodies.

[18] The court found that black students new to the DCSS show greater gains on standardized tests after two years in the system than do similar white students, Pet. App. 63a, and that black students in the DCSS score higher on the Scholastic Aptitude Test than the national average for black students, while white students score lower than the national average for white students. Pet. App. 64a.

[19] With respect to the rulings regarding teacher assignments and resource allocation, the petitioners, in reports to the district court dated September 29, 1989 and August 3, 1989, have attempted to demonstrate full compliance with the district court's outstanding orders in these areas. The district court has not, however, issued any ruling in response to these submissions, in light of the pendency of proceedings in this Court.

The Eleventh Circuit Decision: With respect to the student assignment issue, the Eleventh Circuit held that, as a matter of law, the DCSS retained an affirmative responsibility to cure racial imbalance in student assignment—regardless of its cause—until a condition of "unitariness" is achieved in all facets of school operations:

> [A] school system that has not achieved unitary status must take affirmative steps to gain and maintain a desegregated student population. The DCSS may not shirk its constitutional duties by pointing to demographic shifts occurring prior to unitary status.

Pet. App. 19a. With regard to the district court's finding that the DCSS had in no way contributed to demographic shifts that resulted in today's racial imbalance in student assignment, the court of appeals did not hold that finding clearly erroneous. Pet. App. at 20a-21a. Instead, the court of appeals expressly rejected the suggestion that it could not "hold [a school system] responsible for segregation not 'caused' by its dual system." Pet. App. 19a.[20]

On the question of whether success in remedying prior *de jure* segregation in various facets of school operations should be measured "incrementally," the Eleventh Circuit held that the district court had erred in "defining"

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[20] According to the Eleventh Circuit, the Board's success in desegregating student assignment in 1969 (and the subsequent "cause" of any trend towards resegregation) simply was irrelevant to the inquiry:

> The fact that the DCSS achieved racial parity in the area of student assignment . . . does not demonstrate that it fulfilled its duties to achieve maximum possible desegregation and to avoid the reestablishment of a dual system.

Pet. App. 20a. Because the "affirmative duty" created by the original violation remained in force until "unitary status" was achieved, the court "reject[ed] the district court's refusal to require the DCSS to eradicate segregation caused by demographic changes." Pet. App. 20a.

and "applying the definition" of "unitary status." Pet. App. 12a-16a. According to the court,

> a school system does not achieve unitary status until it [simultaneously] maintains at least three years of racial equality in six categories: student assignment, faculty, staff, transportation, extracurricular activities, and facilities.

Pet. App. 24a. Thus—regardless of whether current conditions with respect to any of those six factors could be attributed to the prior unconstitutional conduct of the DCSS—"a district court can order relief relating to *any* factor until a school system achieves unitary status." *Id.* at 15a (emphasis in original).

SUMMARY OF ARGUMENT

In mandating massive affirmative efforts to eliminate racial imbalance in student assignment resulting solely from shifts in residential housing patterns, the decision below flatly conflicts with established remedial principles articulated in a number of decisions of this Court. The decision below requires the imposition of a remedy not aimed at the effects of any unconstitutional conduct or the effects of any failure by the school district to comply with existing court orders, and, therefore, that remedy is in excess of the court's authority under the Fourteenth Amendment. Accordingly, the judgment below must be vacated.

A. The object of federal remedial orders in the school desegregation context is the elimination of unconstitutional *de jure* dual school systems. *Milliken* v. *Bradley*, 418 U.S. 717, 737 (1974) (*"Milliken I"*). School desegregation remedies must be focused on those conditions or aspects of school operations that offend the Constitution; thus, any remedy directed to a condition that does not violate the Constitution or does not flow from such a violation exceeds appropriate limits. *Milliken* v. *Bradley*, 433 U.S. 267, 282 (1977) (*"Milliken II"*); *Pasadena*

City Bd. of Educ. v. *Spangler*, 427 U.S. 424, 436 (1976); *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 16 (1970). Such "limits" on remedial orders are "tied to the necessity of establishing that school authorities have in some manner caused" the condition that is the subject of the federal court's order. See *Spangler*, 427 U.S. at 434.

The limits on federal injunctive authority in this context reflect fundamental principles of federalism. "[I]t is important to remember that judicial powers may be exercised only on the basis of a constitutional violation. Remedial judicial authority does not put judges automatically in the shoes of school authorities whose powers are plenary." See *Swann*, 402 U.S. at 16. Although the federal courts possess authority to administer even the minutiae of local school operations where necessary to ensure compliance with the Fourteenth Amendment, in circumstances—such as those here—where a comprehensive remedy disestablishing the dual system has been implemented in good faith over many years, courts must accept the fundamental premise of federalism that primary responsibility for the operation of the schools rests with local authorities. See *Board of Educ. of Oklahoma City* v. *Dowell*, 111 S. Ct. 630, 637 (1991).

B. Under the remedial framework established by prior decisions of this Court, a school district that already has implemented an effective plan to disestablish the former *de jure* dual school system may be ordered to undertake further affirmative relief only in limited circumstances. Further relief would be warranted to correct a condition of racial imbalance to the extent that such imbalance is a "vestige" of prior unconstitutional segregation. *Swann*, 402 U.S. at 15. Moreover, further relief may be appropriate to remedy conditions attributable either to additional intentionally segregative conduct on the part of the school board or to the refusal of the school board to comply in good faith with the orders of the district court.

In this case, the petitioners in 1969 eliminated all *de jure* black schools and instituted a strict neighborhood attendance policy, in compliance with the desegregation plan sought by respondents and HEW. Pet. App. 77a. The district court found and the respondents conceded that with respect to student assignment, "the closing of the black schools in 1969 did, for a time, result in the desegregation of the schools of DeKalb County." Pet. App. 33a, 35a. The court also found and respondents also conceded that subsequent racial imbalance in student assignment was attributable solely to shifts in residential housing patterns beyond the control of petitioners. *Id.* at 33a-34a. There is absolutely no basis for concluding that current racial imbalance in student assignment—or in any other aspect of school operations—is attributable to the "prior unconstitutional acts of the defendants." Pet. App. 36a-37a.

Moreover, the district court found that petitioners had complied in good faith with the court's orders and had undertaken voluntary efforts to "combat the shifting demographics" of the County over the years. Pet. App. 39a. Indeed, the court concluded that "the DCSS has done everything that was reasonable under the circumstances to achieve maximum practical desegregation in DeKalb County." Pet. App. 44a. The fact that the respondents themselves took little or no initiative to insist on additional remedial efforts, Pet. App. 32a, strongly supports the conclusion that the DCSS has been operated in good faith and in a manner consistent with the Constitution since implementation of the original decree in 1969. Thus, application of well-established principles of injunctive relief to the undisputed facts in this case demonstrates that the court of appeals' order of additional massive relief in the area of student assignment cannot be supported.

C. The court below offered two novel rationales in support of its order of additional relief in this case. First, the court held that petitioners had an affirmative duty

to eliminate racial imbalance in student assignment, regardless of its cause, as part of their obligation to "move toward the maximum practical level of desegregation." See Pet. App. 18a-19a. Second, the court held that, as a matter of law, any racial imbalance in student assignment must be treated as a "vestige" of the prior *de jure* dual system until such time as the school system achieves "unitary status" on a non-incremental basis—*i.e.*, until it simultaneously "maintains at least three years of racial equality" in six categories (Pet. App. 15a-16a, 18a, 24a)—regardless of the effects of prior remedial orders or intervening "factors for which the defendants could not be considered responsible." *Spangler*, 427 U.S. at 434. Neither theory can be reconciled with this Court's prior holdings.

The error in the court of appeals' "affirmative duty" theory is embodied in that court's rejection of the principle that a federal court cannot "hold [a school system] responsible for segregation not 'caused' by its dual system." Pet. App. 19a. This Court has made clear that a finding of a causal link between a constitutional violation and the condition to be "remedied" is a necessary precedent to an order of affirmative relief. *Milliken II*, 433 U.S. at 282; *Spangler*, 427 U.S. at 434. Because the petitioners have met their "burden . . . to satisfy the court that their [current] racial composition is not the result of present or past discriminatory action on their part," current racial imbalance in student assignment is not a "vestige" of the *de jure* dual system, and the court below lacked authority to order additional affirmative relief. See *Swann*, 402 U.S. at 26.

The court's second rationale, based on its requirement of a finding of "non-incremental" unitariness, is inconsistent with this Court's reasoning in *Spangler* that the failure of a school district "totally [to] achieve[] [a] unitary system" in all aspects of school operations did not "undercut" the school district's elimination of the former

dual system with respect to student assignment. *Spangler*, 427 U.S. at 436. In *Spangler*—as in this case—the good faith implementation of a court-approved "plan designed to obtain racial neutrality in the attendance of students" was sufficient to support the conclusion that the district court "had fully performed its function of providing the appropriate remedy for previous racially discriminatory attendance patterns." *Id.* at 436-37. By foreclosing further court intervention in student assignment—despite the absence of system-wide "unitary status"—this Court in *Spangler* rejected the "overall unitariness" approach adopted by the Eleventh Circuit below. *Id.* at 436; see *Swann*, 402 U.S. at 31-32. Because the court of appeals has ordered affirmative equitable relief in circumstances where there is no constitutional basis for such an order, the judgment of that court must be set aside.

ARGUMENT

THE COURT OF APPEALS ERRED IN ORDERING PETITIONERS TO REMEDY RACIAL IMBALANCE IN STUDENT ASSIGNMENT CAUSED SOLELY BY DEMOGRAPHIC CHANGES BEYOND THE CONTROL OF PETITIONERS

Petitioners are not asking this Court for an immediate declaration of "unitary status" and dissolution of the district court supervision under which they have been operating for the last 22 years. Rather, petitioners seek relief from an extraordinary order of the court of appeals mandating massive affirmative relief in student assignment—such as "pairing and clustering of schools, drastic gerrymandering of school zones" and busing (Pet. App. 23a)—designed "to eradicate segregation caused by demographic changes." Pet. App. 20a.

The Eleventh Circuit offers two separate bases for its decision: (1) the DCSS was obligated to do more to counteract shifts in housing patterns which had caused

racial imbalance in order to fulfill its mandate to "move toward the maximum practical level of desegregation" (Pet. App. 18a); and (2) the system's prior success in desegregating student assignment is irrelevant because "unitary status" cannot be achieved on an incremental basis. Pet. App. 15a-16a. However, both of these rationales are wholly inconsistent with this Court's prior decisions in this area and fundamentally at odds with clear limits on the scope of a federal court's equity power. Accordingly, neither rationale properly supports the holding of the court of appeals, and the judgment below must be vacated.

A. Federal Judicial Authority To Remedy Racial Imbalance In Any Facet Of School Operations Must Be Causally Linked To The Prior Unconstitutional Conduct Of The Relevant State Actors

Any rule that defines the limits of federal authority to remedy *de jure* segregation in local school board operations must correspond to the circumstances that gave rise to such authority in the first instance. In the school desegregation context, "[t]he target of the *Brown* holding was clear and forthright: the elimination of state-mandated or deliberately maintained dual school systems with certain schools for Negro pupils and others for white pupils." *Milliken* v. *Bradley*, 418 U.S. 717, 737 (1974) (*"Milliken I"*). Although hundreds of local school systems have been placed under federal judicial supervision to reverse their prior "dual" status, each system presents distinct problems and conditions. *Brown* v. *Board of Educ.*, 349 U.S. 294, 298 (1955) (*"Brown"*); *Green* v. *County School Bd.*, 391 U.S. 430, 436-37 (1968). The common denominator in the framing of remedial authority is the need to "correct, by a balancing of the individual and collective interests, the condition that offends the Constitution." *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 16 (1970).

In formulating an appropriate remedy then, "the nature of the violation determines the scope of the remedy." *Swann*, 402 U.S. at 16; see *Milliken* v. *Bradley*, 433 U.S. 267, 280 (1977) (*"Milliken II"*). "[F]ederal-court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation." *Milliken II*, 433 U.S. at 282; see *Spangler*, 427 U.S. 424 (1976); *Milliken I*, 418 U.S. at 746; *Dayton Bd. of Educ.* v. *Brinkman*, 433 U.S. 406, 420 (1977) (desegregation remedy must focus on the "incremental segregative effect" of specific constitutional violation).

Despite the undeniable importance of "eliminat[ing] from the public schools all vestiges of state-imposed segregation," the use of federal judicial power to achieve that objective necessarily is constrained by the limits of the Fourteenth Amendment itself. See, *e.g.*, *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 31-32 (1970). Where remedial orders have gone beyond what is necessary to remedy a condition actually caused by a school board's prior unconstitutional conduct, such orders have been struck down. For example, in *Milliken I*, 418 U.S. 717, this Court held that findings of *de jure* segregated conditions within the Detroit School District could not justify an interdistrict remedy that mandated racial balance in school assignment not only within the Detroit School District itself but also within numerous outlying school districts as well. Because the interdistrict remedy "was based upon an erroneous standard"—*viz*, an effort to obtain a particular degree of racial balance (*id.* at 752)—and "was unsupported by record evidence that acts of the outlying districts effected the discrimination found to exist in the schools of Detroit," the remedy was held to be beyond a federal court's authority under the Fourteenth Amendment. *Id.*

Similarly, in *Spangler*, this Court held that where an earlier remedial order had "established a racially neutral system of student assignment," 427 U.S. at 434, the dis-

trict court "exceeded its authority" in continuing to "require annual readjustment of attendance zones" to maintain racial balance in student assignment. *Id.* at 434-35.[21] According to this Court,

> [n]either school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished . . . .

Spangler, 427 U.S. at 436 (quoting *Swann*, 402 U.S. at 31-32). The Court emphasized that such an order exceeded a federal court's authority because there was no causal link between "a constitutional violation" on the part of defendants and the "judicially order[ed] assignment of students on a racial basis." *Id.* at 434 (quoting *Swann*, 402 U.S. at 28).

Based on these principles, the existence of significant *de facto* segregation caused exclusively by private choices provides no basis for judicial correction for the simple reason that there is no "substantive constitutional right to a particular degree of racial balance or mixing." 427 U.S. at 434 (quoting *Swann*, 402 U.S. at 24). Instead, there must be some basis for attributing the existing condition of "imbalance" either to the *de jure* segregation that was terminated more than 20 years ago, which is inherently unlikely, or to the conduct of the School Board in the interim. Moreover, in analyzing those issues, the Court does not operate in a vacuum. Instead, the Court in *Milliken I* made plain that in examining the proper scope of any remedial order, "the interests of state and local authorities in managing their own affairs, consistent with the Constitution" also must be considered. 433 U.S. at 280-81.

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[21] The district court in *Spangler* "apparently believed it had authority to impose this requirement [of racial balance in student assignment] even though subsequent changes in the racial mix in the Pasadena schools might be caused by factors for which the defendants could not be considered responsible." *Id.* at 434.

A federal court's authority is constrained by core notions of federalism, including the recognition that "[s]chool authorities have the *primary* responsibility for elucidating, assessing, and solving these problems." *Brown*, 349 U.S. at 299 (emphasis added); see *Dowell*, 111 S. Ct. at 637. The need to place reasonable limits upon a federal court's supervision of a school system flows directly from the unquestioned deterrent effect a desegregation order has upon a school board's willingness to undertake new or innovative educational programs. Such deterrence arises from the fact that it is inherently difficult, if not impossible, to predict with certainty the impact of race-neutral educational programs on a school district's racial balance—especially during periods of demographic change. Because any arguably segregative effect caused by a school system operating under a desegregation decree likely will be challenged—with the attendant costs in time and attorneys' fees—the safest course for such a school system is to undertake no changes in its educational programs, even when there is reason to do so.

In sum, limits imposed by Our Federalism require the courts to recognize that they are ill-equipped to perform the functions of a school board and that a school board cannot optimally perform its function of educating children when its every choice is being scrutinized exclusively on the basis of its effect on racial balance within the schools. As the Fifth Circuit recognized in similar circumstances,

> accommodation of federal superintendence and federalism will not tolerate the idea that although the wrong is righted, the magnitude of the past wrong nonetheless justifies perpetuation of a federal order limiting the ambit of a school district's self-governance.

United States v. *Overton*, 834 F.2d 1171, 1177 (5th Cir. 1987). For these reasons, once *de jure* segregation has been disestablished and its effects disappear, federal

courts should not craft new duties designed to perpetuate federal control over the school board's operations. Such "limits" on remedial authority are "tied to the necessity of establishing that school authorities have in some manner *caused* unconstitutional segregation." *Spangler*, 427 U.S. at 434 (emphasis added).[22]

B. The Court Below Erred In Ordering Petitioners To Undertake Massive Additional Efforts To Obtain Racial Balance In Student Assignment When Existing Imbalances Could Not Be Attributed To Petitioners' Prior Unconstitutional Conduct Or Subsequent Acts.

1. Under the decisions of this Court, where the *de jure* dual system has been long disestablished, a school district may only be ordered to undertake further affirmative relief in two circumstances. First, further relief is warranted to correct a condition of racial imbalance where that condition is a "vestige" of prior unconstitutional segregation. See *supra* 24-26, *infra* 37-38. If current racial imbalance is in some way attributable to—*i.e.*, causally linked to—*de jure* segregation, then the school system must take whatever steps are necessary to eliminate such a vestige of segregation. Thus, the Court in *Swann* held that mandatory busing was an appropriate method of eliminating segregation because no less onerous means could assure elimination of the effects of segregated schools. 402 U.S. at 29-31. Similarly, in *Green*, 391 U.S. at 441, when various "voluntary" methods failed to cure the effects of *de jure* segregation, it was appropriate to enter an order requiring mandatory student assignment.

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[22] The rule that limits federal injunctive authority to curing only those "conditions" that have been caused by the prior unconstitutional conduct of the relevant state actor embodies the most fundamental of federalism principles. *Swann*, 402 U.S. at 16 ("[I]t is important to remember that judicial powers may be exercised only on the basis of a constitutional violation. Remedial judicial authority does not put judges automatically in the shoes of school authorities whose powers are plenary").

Second, an order of further relief may be sustained where such relief is necessary to remedy conditions attributable to additional intentionally segregative conduct on the part of the school board or to refusals by the school board to comply in good faith with the court's desegregation orders. See, *e.g.*, *Dowell*, 111 S. Ct. at 638 (court must consider "whether the Board had complied in good faith with the desegregation decree").[23] A board that undertakes actions that reflect an absence of good faith compliance with the requirements of an existing desegregation decree may be required to undertake further remedial efforts necessary to remedy the segregative effects of its non-compliance. At the very least, a district court always is empowered to ensure compliance with its outstanding lawful orders and to remedy the effects of non-compliance.[24]

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[23] In *Dowell*, this Court stated that, in determining whether federal court supervision of a formerly *de jure* dual system may be terminated, the court,

> should address itself to whether the [school board] had complied in good faith with the desegregation decree since it was entered, and whether the vestiges of past discrimination had been eliminated to the extent practicable.

111 S. Ct. at 638. The inquiry in the present case is similar—but not identical—to the inquiry in *Dowell*. There, the question was whether the district court's decree should be finally terminated. *Id.* at 638. Here, the question is whether the court of appeals properly expanded the obligations of the existing decree to impose additional burdens. Obviously, if the *Dowell* standard—justifying final dismissal of the action—is satisfied, there would be no basis for increasing the scope of the remedy. However, the converse is not necessarily true: although an absence of good faith compliance might justify continued district court supervision, an absence of "good faith" would not necessarily justify *expansion* of relief. Instead, the lack of good faith compliance with the original decree would justify expansion of that remedy only to the extent necessary to eliminate the incremental segregative effects of the lack of good faith compliance.

[24] Obviously, the district court also is justified in expanding the scope of an existing desegregation order to the extent necessary to

The primary "vestige" of *de jure* segregated school systems has been the "holdover" identifiably "black school." See *Dayton Bd. of Educ.* v. *Brinkman*, 443 U.S. 526, 537-538 (1979). Because these schools were often perceived as inferior in virtually every way, they carried a significant stigma that discouraged white students from attending them, regardless of improvements to physical facilities or staffs. The existence of such "holdover" schools has presented one of the most intractable problems in school desegregation litigation, and district courts understandably have been reluctant to find that such "holdover" schools are not a vestige of the dual system.[25]

The DCSS, by contrast, has had no holdover all-black schools since 1969. In that year, the former *de jure* "black schools" were closed and all black children were integrated into neighborhood schools in accordance with the plan proposed by HEW and the respondents and suggested by this Court's decisions in *Green* v. *County School Bd.*, 391 U.S. 430, 442 n.6 (1968), and *Raney* v. *Board of Educ. of Gould School Dist.*, 391 U.S. 443, 448 (1968). Neither respondents nor the court of appeals has been able to point to a single condition or aspect of operations in the DCSS that is traceable to the *de jure* segregated conditions that existed prior to 1969. In particular, there is no question that current conditions and policies relating to student assignment—which, since 1969, have been subject to judicial supervision—cannot be deemed to be

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eliminate the effects of new intentionally segregative conduct by the school board. See *Spangler*, 427 U.S. at 434; see *Washington* v. *Davis*, 426 U.S. 229 (1976).

[25] The hundreds of school desegregation opinions issued in the courts of the old Fifth Circuit show that the vast majority of student assignment problems have been traceable to the "holdover" black school. See, *e.g.*, *Price* v. *Denison Indep. School Dist.*, 694 F.2d 334, 364-66 (5th Cir. 1982) (listing cases addressing difference between holdover virtually all-white schools and holdover *de jure* black schools in predominantly white school districts).

a "vestige" of the prior *de jure* dual system. See *infra* 32-34.

Moreover, with respect to the issue of whether the DCSS's interim conduct provides any basis for imposing additional affirmative relief, there is no question that the DCSS over the past 22 years consistently has complied in good faith with the district court's orders. See *infra* 35.[26] If the assignment of students to schools—pursuant to the terms of the court's race neutral decree—nevertheless results in some imbalance in the distribution of the races, that is not a condition that offends the Constitution and it provides no basis for imposing additional affirmative duties on the School Board.

This is the essential teaching of *Spangler*, in which this Court held that a school district that had "implemented a racially neutral attendance pattern" and thereby established "a system of determining admission to the public schools on a nonracial basis," *Spangler*, 427 U.S. at 435 quoting *Brown*, 349 U.S. at 300-01), had performed its obligation with regard to remedying "previous racially discriminatory attendance patterns." *Id.* at 437. Absent a "showing" that "changes in the racial mix of some Pasadena schools" that occurred after the racially neutral method of assignment had been established "were in any manner caused by segregative actions chargeable to the defendants," *id.* at 435, the Court concluded that there was no basis for ordering further relief.

In reaching this conclusion, the Court in *Spangler* flatly rejected the very different approach of the dissent. In the dissent's view, the school district, which had formerly imposed *de jure* segregation, properly could be ordered to maintain racial balance in the Pasadena schools until

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[26] The Eleventh Circuit did not suggest that the massive additional remedial efforts in student assignment were justified by any absence of good faith on the part of petitioners. The record would not support such a finding and, in fact, the unchallenged findings of the district court are to the contrary. See Pet. App. 44a-48a.

full "unitary status" was achieved. Thus, the *Spangler* dissent argued that a federal court in a desegregation case was invested with sweeping authority to supervise school systems to promote racial balance—regardless of whether the imbalance could be attributed to any previous segregation by the school board. However, unless this Court is willing to abandon the principles uniformly articulated in its remedial decisions, see *supra* 25-26, in favor of the approach of the *Spangler* dissent, application of those well-established principles of injunctive relief to the undisputed facts in this case demonstrates that the order mandating an additional student assignment remedy cannot be supported.

2. In DeKalb County, assignment of students to schools according to race was terminated in the 1966-67 school year. In 1969, the district court ordered the adoption of a student assignment plan—urged by respondents and by HEW—pursuant to which all former *de jure* black schools were closed and a strict system of neighborhood attendance zones (formulated by HEW) was established. At the time this order was implemented, the residential segregation that is found in the County today simply did not exist, and the order was designed to (and did) ensure that all students immediately be "assigned to [all] grades without regard to race or color." Pet. App. 77a.

Thus, as the court of appeals recognized, the DCSS effectively dismantled the dual school system and "achieved racial parity in the area of student assignment on the day it closed the *de jure* black schools" in 1969. Pet. App. 20a. Only two of the 92 schools which remained open after implementation of the 1969 order had majority black student populations (Def. Ex. 193) and both of those schools had historically been operated as *de jure* white schools. One of the schools, Stoneview Elementary, which is located in a "stable integrated area" (Pet. App. 37a), opened in 1969 with a student body that was 51% black; at the time of the hearing, almost 18 years later,

the racial makeup of that school was virtually unchanged. See Def. Ex. 193 (for most of the period between 1969 and 1986, Stoneview had a majority white student population); Pet. App. 37a (racial mix at Stoneview is 53% black as of 1986-87 school year).

The other school, Terry Mill Elementary School, was undergoing more substantial swings in racial composition due to its location adjacent to the City of Atlanta and shifting demographics at the time of the original desegregation order. In 1967, blacks constituted 23% of the student population of that school; in 1968, blacks constituted 50% of the student population; and, in 1969, the percentage of black students at the school was 76%. Pet. App. 36a. The district court found, however, that there was "no evidence presented that the former dual system in any way contributed to the rapid racial transition of that school." *Id.* Instead, the court concluded, based on the evidence presented, that the shifting racial balance of the student population was attributable solely to rapidly changing demographics in the surrounding neighborhoods. *Id.* ("the area surrounding Terry Mill School was one of the first areas to be [a]ffected by a rapid shift in the minority population"). The district court could find no support for the suggestion that the "high percentage of minority students in Terry Mill School in 1969" was attributable to the "prior unconstitutional acts of the defendants." *Id.* at 37a.

Given the recognized success of the 1969 order in desegregating the student populations in the DCSS, as well as the district court's careful, and undisputed, analysis of the effects of changing residential housing patterns over the years (Pet. App. 33a-48a), there is no basis to conclude that the current imbalance in student assignment—or any other aspect of school operations—is a "vestige" of the former dual school system.[27] To the contrary, any

[27] There is no connection between the failure of the school board to meet the arbitrary *"Singleton"* criteria in all of its schools at

racial imbalance in the DCSS is a product of current housing preferences of private individuals and is in no way attributable to the conduct of the School Board prior to 1969.[28]

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the time of the district court hearing and the *de jure* segregated schools of 1968. It is undisputed that the DCSS has exceeded all requirements with respect to the hiring of minorities in both teaching and administrative positions within the school district and that since 1969 there never has been a school with a majority black faculty. See *supra* 16 & n.16; Pet. App. 48a-49a. To be sure, the School Board at times has permitted some variation from the statistical norm for percentages of minority teachers and administrators at a given school. But it is also clear that this has been caused by the right of teachers with seniority to work closer to their homes and the preferences of parents at schools with black majorities to have black principals. While those excuses do not justify deviations from *Singleton*, as that case is interpreted in the Eleventh Circuit, they certainly eliminate any inference that such statistical imbalances are traceable to times when segregation was mandated by state law.

Similarly, there is no basis for inferring that the disparities in "educational resources" among various "types" of schools has any relationship to past discrimination. In fact, the district court found that this disparity is merely numerical and there is no qualitative difference in education based on race. See *supra* 16-17. Moreover, the data are largely explained by the fact that schools in the southern part of the District tend to be larger as a result of the recent, dynamic growth in that area. See Def. Ex. 193; Tr. Vol. V, pp. 209-10; Vol. VI, pp. 152-54. Large schools have the same fixed costs as small schools—*i.e.*, the same number of principals, band directors, sports teams, etc.—and thus, large schools operate more "efficiently" in terms of per pupil expenditures. Such an imbalance also is attributable to the fact that faculty with more seniority (and higher salaries) tend to assert their right to work in schools closer to their homes. In any case, the finding of the district court in its November 3, 1976 order (see *supra* 8) that there was no evidence of disparity in the availability of resources makes clear that such a "disparity" is in no way traceable to conduct that occurred more than 20 years ago.

As noted previously, petitioners believe that they now have eliminated both of these "disparities." See *supra* n.19. That issue, however, is before the district court.

[28] See *supra* 11. The district court's findings on this point were entirely consistent with the findings of the three-judge court in

In addition, the racial imbalance in the student population of certain schools is unrelated to any conduct of the School Board since 1969. Indeed, the record as a whole demonstrates not just an absence of defiance to the district court's orders, but a longstanding commitment by the DCSS to undertake programs to "combat the shifting demographics" within the County. Pet. App. 39a. The fact that the respondents themselves took little or no initiative to insist on additional remedial efforts over the past 20 years (until petitioners moved to lift the injunction), Pet. App. 32a, is perhaps the best evidence that the DCSS during that period has been operated in good faith and in a manner consistent with the Constitution.

The Eleventh Circuit's holding that the mere presence of racial imbalance in the schools "indicates that vestiges remain" and that the DCSS has not achieved "maximum practical desegregation" in student assignment (Pet. App. 20a, 22a) is wrong and defies well-established remedial principles. That holding simply cannot be sustained unless this Court intends to overrule *Spangler*. Overreaching efforts to obtain through judicial fiat a "perfectly" operated and racially-balanced public school system fail to recognize that such a "solution . . . may be unattainable in the context of the demographic, geographic, and sociological complexities of modern urban communities." *Estes* v. *Dallas NAACP*, 444 U.S. 437, 448 (1980) (Powell, J., dissenting). More important, given the current financial realities of most public school systems, a call for the infusion of massive resources in pursuit of racial balance necessarily must divert such resources from other valid educational goals—many of which are likely to have a more immediate and substantial impact on the quality of

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Armour v. *Nix*, *supra* n.11, which found in 1979 that residential housing patterns in DeKalb County were the result of "personal preference and economic constraints" and that DCSS officials had not engaged in any conduct contributing to residential segregation. Order (9/24/79), at 32-33.

education within the school system. Nevertheless, *if*, in fact, the Constitution commanded such expenditures, petitioners could not, and would not, shirk their responsibilities. But where, as here, petitioners' school assignment practices fully comply with their constitutional obligations, no further relief should be ordered.

It may well have been the expectation of this Court or of the public generally that the landmark constitutional holdings of the 1950's and equitable holdings of the 1960's would in the end lead to racially balanced school systems throughout the nation. Certainly, it was reasonable to hope that race relations would advance to a point that by 1990, school systems would be more meaningfully integrated—at least in statistical terms—than the DCSS is. But the failure to maintain racial balance for its own sake is not a remedial failure. If it is a failure at all, it is a social failure.

It would serve no valid purpose now to attempt to remedy such a social problem by imposing increased burdens on school districts that could not have prevented or influenced the housing preferences that created racial imbalance in the schools. *Swann*, 402 U.S. at 22 ("One vehicle can carry only a limited amount of baggage"). The crucial fact for purposes of this litigation is that there is no *de jure* segregation in DeKalb County today and the School Board certainly has no desire to turn back the clock. To the contrary, the presence of black members on local school boards, such as the two currently on the DCSS's seven-member board, ensures that school district administrators will continue to act without regard to race or face immediate and public condemnation. Contrary to the holding below, the time for—and need for—immediate and drastic federal judicial intervention has long since passed.

C. The Theories Advanced By The Eleventh Circuit Provide No Support For Extending Federal Judicial Supervision Over Student Assignment In DCSS Once Racial Imbalance Attributable To State Action Has Been Eliminated.

The Eleventh Circuit's decision offers two intertwined rationales in support of its order of additional relief in the area of student assignment: (1) the DCSS was obligated to remedy the effects of changing housing patterns as part of its affirmative duty to "move toward the maximum practical level of desegregation" (Pet. App. 18a); and (2) the DCSS's affirmative duty to maintain racial balance in student assignment continued in effect until the DCSS achieved longstanding "unitary status" on an overall (*i.e.*, non-incremental) basis. Pet. App. 15a-16a. Neither theory can be reconciled with this Court's prior holdings.

1. According to the court below, a formerly *de jure* dual school system has an "affirmative duty" to eliminate racial imbalance in student assignment, regardless of its cause. Moreover, the court held that the existence of any racial imbalance in a "non-unitary" system must be deemed as a matter of law to be a "vestige" of prior unconstitutional discrimination until such time as the school system achieves "unitary status" (as defined by the court, see *supra* 35)—regardless of the success of prior desegregation decrees or the effect of intervening "factors for which the defendants could not be considered responsible." *Spangler*, 427 U.S. at 434. As noted previously, *supra* 25-26, 31-32, this Court's prior holdings undermine completely this portion of the court of appeals' analysis.

This Court never has undertaken to delineate all of the conditions which, in a particular case, might be found to constitute a "vestige" of discrimination. However, as a general principle, a "vestige" of discrimination that is subject to further remediation must be an identifiable condition or practice which is fairly traceable to the orig-

inal constitutional violation. See *Milliken* v. *Bradley*, 433 U.S. 267, 282 (1977); *Spangler*, 427 U.S. at 434-35. In other words, a finding that a particular condition or facet of school operations is a "vestige" of the dual system must be supported by more than a showing of racial imbalance. See *Spangler*, 427 U.S. at 434.[29]

The Eleventh Circuit's characterization of racial imbalance caused solely by shifting housing patterns as a "vestige" of discrimination (Pet. App. 20a) renders the term "vestige" useless as an analytical tool. In contrast to the careful focus on the nature and scope of the constitutional violation inherent in this Court's remedial decisions from *Swann* to *Spangler*, the decision below concocts a completely artificial standard to determine the scope of a school board's duty in a desegregation case—

[29] A lack of racial balance in the schools cannot be deemed to be a "vestige" of past discrimination where, as here, the school authorities have met their "burden . . . to satisfy the court that their [current] racial composition is not the result of present or past discriminatory action on their part." *Swann*, 402 U.S. at 26; see *Keyes* v. *School Dist. No. 1, Denver, Colo.*, 413 U.S. 189, 211 n.17 (1973) (school authorities must "show that current segregation is in no way the result of those past segregative actions"). In *Spangler*, the Court held that once an effective student assignment remedy had been implemented, the plaintiffs bore the burden of proving that "changes in the racial mix of some Pasadena schools . . . were in any manner caused by segregative actions chargeable to the defendants." 427 U.S. at 437.

The apparent difference in the assignment of the burden of proof between *Keyes* and *Spangler* is explained by the fact that an effective student assignment remedy already had been instituted in *Spangler*, whereas in *Keyes*, there had been no such remedy. Thus, in *Spangler*, the chain of causation, which had been established by the proof of the violation, had been broken by the implementation of the remedy, and the burden of proof shifted back to the plaintiffs. In this case, even though the 1969 remedy concededly was effective in terms of student assignment, petitioners voluntarily came forward with evidence to prove the cause of current racial imbalance in student assignment and petitioners' lack of involvement in, or control over, those causes. See *supra* 13-14.

an affirmative duty to gain and maintain racial balance, regardless of the factors that would tend to give rise to any imbalance.

In the DCSS, the "neutral attendance pattern" required by *Spangler*, 427 U.S. at 437, was established in 1969, and the petitioners' record of continuous good faith compliance is clear. See *supra* 35. There is no evidence that the subsequent racial imbalance in the schools resulted from anything other than demographic changes in District-wide residential patterns. See Pet. App. 34a (respondents "concede that the racial segregation in DeKalb County is the result of demographic shifts"); *supra* 6-7, 14-15.[30] Moreover, those shifts in housing patterns are in no way attributable to any "segregative actions chargeable to defendants." *Cf. Spangler*, 427 U.S. at 437. Yet, the standard adopted by the Eleventh Circuit, with its focus on an expanded "affirmative duty," would require the district court to avoid the result dictated by *Spangler* and to order further drastic relief in student assignment to "eradicate segregation caused by demographic changes." Pet. App. 20a.[31]

[30] In referring to current "segregation" or racial imbalance in student assignment, the district court repeatedly made clear its conclusion—which is undisputed by both the court of appeals and respondents—that the current racial imbalance constituted "de facto segregation (segregation caused by private choice)" Pet. App. 28a, not *de jure* "segregation caused by the intentional segregative acts of the [school district] . . . ." App. at 28a.

[31] The Eleventh Circuit's reliance on racial imbalance caused solely by shifting housing patterns as a basis for mandating additional relief ignores the principle that

> continuing limits [on school board action] imposed as a remedy after the wrong is righted effectively changes the constitutional measure of the wrong itself; it transposes the dictates of the remedy for the dictates of the constitution and, of course, they are not interchangeable.

United States v. Overton, 834 F.2d 1171, 1176 (5th Cir. 1987). Such an expansive notion of a school board's affirmative remedial

At bottom, the fundamental flaw with the Eleventh Circuit's "affirmative duty" analysis is that it eliminates the causation requirement of *Swann*, *Milliken I* and *Spangler* from the remedial stage of school desegregation litigation. See *supra* 25-26. The court below flatly rejected the proposition that the federal courts could not "hold [the DCSS] responsible for segregation not 'caused' by its dual system." Pet. App. 19a.[32] In so holding, the court "exceeded appropriate limits" because it imposed a remedy "aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation." *Milliken II*, 433 U.S. at 282; see also *Spangler*, 427 U.S. 424. Because the theory of "affirmative duty" applied by the court below is fatally flawed, the result reached cannot be sustained and, therefore, the judgment below must be vacated.

2. The Eleventh Circuit also adopted a "per se" test of "overall unitariness" to measure when the implementation of a desegregation plan has been successful and the school district's "affirmative duty" is terminated. Pet. App. 15a-16a.[33] The court held that "a school system

obligations goes beyond the limits of this Court's precedents and embraces the vastly different vision of the federal court's authority embraced in the *Spangler* dissent.

[32] Respondents' concessions that the 1969 order "did, for a time, result in the desegregation of the schools of DeKalb County" and that DCSS in no way "caused" the subsequent racial imbalance were irrelevant to the application of the standard adopted by the Eleventh Circuit. See Pet. App. 20a ("[t]he fact that the DCSS achieved racial parity in the area of student assignment . . . does not demonstrate that it fulfilled its duties to achieve maximum possible desegregation").

[33] The term "incremental unitariness" has been used to describe the standard by which a school district can measure progress towards elimination of a *de jure* segregated school system by achieving a court-ordered goal with respect to each facet of operations (or each *Green* factor)—regardless of whether the goal with respect to every other *Green* factor has yet been achieved. See *Morgan* v. *Nucci*, 831 F.2d 313 (1st Cir. 1987); *Flax* v. *Potts*, 915 F.2d 155, 158-59 (5th Cir. 1990) (achieve unitary status incrementally); *United States* v. *Overton*, 834 F.2d 1171 (5th Cir. 1987) (unitary status achieved in an incremental fashion); *Keyes* v. *School Dist. No. 1, Denver, Colo.*, 895 F.2d 659, 666 (10th Cir. 1990), *cert. denied*, 111 S. Ct. 951 (1991) (school district declared unitary in certain respects, even though other respects remain nonunitary). By contrast, under the Eleventh Circuit's requirement of overall unitariness, each facet of school operations must be remedied (and must remain in some form of undefined racial balance over a period of years) before the school district may be released from the obligations of the desegregation decree relating to any one facet of operations.

does not achieve unitary status until it [simultaneously] maintains at least three years of racial equality in six categories: student assignment, faculty, staff, transportation, extracurricular activities, and facilities." Pet. App. 24a; see *id.* at 14a & n.9 (school system must fulfill "all six factors *at the same time* for [three] years").[34] Thus, according to the Eleventh Circuit, a lower court has an unconstrained mandate to order affirmative relief designed to achieve racial balance in all facets of school operations until overall "unitary status," under the terms of this "per se" test, has been achieved. Pet. App. 14a-15a ("a district court can order relief relating to *any* factor until a school system achieves unitary status").[35]

At the outset, the "per se" test adopted by the Eleventh Circuit provides no meaningful guidance in measuring

[34] Citing *Youngblood* v. *Board of Pub. Instruction*, 448 F.2d 770, 771 (5th Cir. 1971). The former Fifth Circuit has since been divided into the Fifth and Eleventh Circuits, and the current Fifth Circuit has expressly rejected the "test" advocated by the court below. *Flax* v. *Potts*, 915 F.2d 155 (5th Cir. 1990); *United States* v. *Overton*, 834 F.2d 1171 (5th Cir. 1987).

[35] "Not until all vestiges of the dual system are eradicated can demographic changes constitute legal cause for racial imbalance in the schools. . . . Notwithstanding the school authorities' apparent good faith attempt to desegregate in 1970, the system has never achieved unitary status. . . . Consequently, the school board . . . is still under an affirmative duty" to order further relief to achieve racial balance in school assignment. Pet. App. 20a, (quotations omitted).

the success of efforts at desegregation of formerly *de jure* dual school systems. This "test" provides no benchmark to determine when the "*Green* factors"—which merely identify various "facets" of school operations (*Dowell*, 111 S. Ct. at 638)—are "fulfilled," to the extent required by the court. Pet. App. 14a. Moreover, although the test calls for racial equality, the court of appeals expressly has instructed that success in achieving such equality in each of the *Green* factors *cannot* be based on "any particular degree of racial balance" or "racial percentages." Pet. App. 21a & n.13.[36] Such an artificial "test" cannot substitute for the necessarily fact-bound analysis of the conditions within the school system, "assessed in light of the circumstances present and the options available in each instance." *Green*, 391 U.S. at 439; see *supra* 13-17. Moreover, by couching the inquiry in the form of a mechanical, yet imprecise, "per se" standard, the Eleventh Circuit's approach is more likely to impede rather than promote progress towards desegregated school systems.[37]

The "per se" test applied by the Eleventh Circuit in this case must be rejected as inconsistent with this Court's prior decisions. In particular, the question of whether a lack of compliance in one facet of school operations may support additional affirmative relief in a separate facet of operations was addressed by this Court in *Spangler*, 427 U.S. at 436-37. As noted *supra* 25-26, 31, the Court in that case found that implementation of the original desegregation plan in the Pasadena Unified School District ("PUSD") had "achieve[d] a system of determining admission to the public schools on a non-

[36] Thus, the court below demanded that an additional remedy be imposed solely to rectify a numerical racial imbalance, while simultaneously forbidding the use of any numerical standard to assess the effectiveness of the remedy in curing the imbalance. Pet. App. 21a-22a.

[37] "[A] school board is entitled to a rather precise statement of its obligations under a desegregation decree," *Dowell*, 111 S. Ct. at 636, but the Eleventh Circuit's "test" provides neither precision nor accuracy in defining the scope of the DCSS's obligations.

racial basis." 427 U.S. at 435 (quoting *Brown*, 349 U.S. at 300-01). Although "changes in the demographics of Pasadena's residential patterns" had resulted in subsequent racial imbalance in the schools (including the evolution of several majority black schools), this Court held that the original plan had achieved the necessary objectives with respect to student assignment and no further "relief" in that area was permissible. *Id.* at 435-36. In so holding, the Court pointed to a passage from the *Swann* opinion, which noted that "[n]either school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system." *Id.* at 436 (quoting *Swann*, 402 U.S. at 31-32).

The Court's opinion in *Spangler* made clear that the termination of authority over student assignment was final, despite the fact that "petitioners [may] have not yet totally achieved the unitary system contemplated by this quotation from *Swann*." 427 U.S. at 436. Thus, the *Spangler* Court held that the absence of proof that the PUSD had demonstrated "compliance with those portions of the plan specifying procedures for hiring and promoting teachers and administrators . . . does not undercut the force of the principle underlying the quoted language from *Swann*." *Id.* Accordingly, under *Spangler*, the achievement of desegregation in each of the facets of school operations suggested by *Green* should be considered as *discrete* objectives—not as part of an abstract condition or overall "status" of "unitariness."

The Eleventh Circuit rejected the argument that its holding was inconsistent with the decision in *Spangler*, stating that "[i]n *Spangler*, the Court simply refused to approve the Pasadena School Board's rigid requirement that no minority comprise a majority of any school population." Pet. App. 16a. Such a response not only mischaracterizes the plain holding of this Court in *Spangler*

but reflects the focus of the court below on the achievement of an abstract *condition* of "unitariness," rather than on the satisfaction of a number of more specific and measurable operational goals. See Pet. App. 16a ("[a] school system achieves unitary status or it does not").

The court below simply refused to acknowledge what the majority in *Spangler* found to be the "principle" derived from the *Swann* decision—*viz.*, that the failure "totally [to] achieve[] [a] unitary system" did not undermine the PUSD's ability effectively to achieve unitary status (and an end to judicial supervision) with respect to student assignment. *Spangler*, 427 U.S. at 436. In *Spangler*, as in this case, once a court-approved "plan designed to obtain racial neutrality in the attendance of students" in the public schools was successfully implemented, "*that* objective" (*id.* at 436 (emphasis in original)) of the case was completed, and the district court "had fully performed its function of providing the appropriate remedy for previous racially discriminatory attendance patterns." *Id.* at 436-37. By foreclosing further court intervention in student assignment in the PUSD—despite the lack of system-wide "unitary status"—this Court in *Spangler* rejected the "overall unitariness" approach adopted by the Eleventh Circuit below.[38]

Indeed, the "overall unitariness" theory of the Eleventh Circuit is incompatible not only with *Spangler* but also with the "principle[s] underlying" *Swann*, upon which the *Spangler* Court relied. 427 U.S. at 436. Fundamental

[38] The dissent in *Spangler* argued for an approach that is virtually indistinguishable from that adopted by the court of appeals here, asserting broad remedial authority for the district court to adjust school attendance zones until "the goal of a wholly unitary system" had been achieved. 427 U.S. at 443 (Marshall, J., dissenting). The majority observed, however, that the arguments supporting such an approach "have little substance." *Id.* at 438 n.5.

to the Court's analysis in *Swann* is the basic concept that the federal court's remedial authority is exhausted once the condition that creates that authority has been eliminated. Accordingly, if the court effectively desegregated a school system with respect to student assignment, there would be no basis for providing further relief unless the school board intentionally engaged in conduct with a segregative effect in that particular area of school operations. See *supra* 29. School board conduct with an impermissible effect in some other area of operation of the school provides no basis under *Swann* for a court to impose a remedy in the area of student assignments.

The point can be easily illustrated by a simple example. If a school board was found liable in the first instance only for failing to hire sufficient minority faculty members, that would provide no basis for judicial modification of student assignment. The principle should be no different simply because the school district once operated a segregated school system. In either situation, there must be a fair connection between the offending conduct and the remedy ordered by the district court. See *supra* 25-26. Every aspect of a remedial order must be "aimed at eliminating a condition that . . . violate[s] the Constitution or . . . flow[s] from such a violation." *Milliken II*, 433 U.S. at 282. Because the test of "overall unitariness" that was essential to the holding below is fundamentally inconsistent with the decisions of this Court, particularly *Spangler*, the judgment below cannot be sustained.[39]

[39] Even if the two facets of school board operations found by the district court to require additional remediation (*i.e.*, faculty/staff assignment and resource distribution, *supra* 15-17) could be found to have had some impact on student assignment—and there is no finding by the district court that would support such an argument—it would nevertheless be patently overbroad to order massive affirmative relief aimed at the achievement of racial balance in student assignment in response to minor "imbalances" in *other* aspects of school operations. Regardless of whether an "incremental" or "non-incremental" analysis is adopted, *Dayton* makes clear that the remedy must be tailored to the specific violation, and here, the order of the court of appeals is not so tailored.

3. Affirmance of the remedial theories adopted by the Eleventh Circuit would have the practical effect of extending indefinitely federal court oversight of local school board operations. Although the Eleventh Circuit must have believed that ongoing supervision was necessary to achieve its own goals for the DCSS, the decision reflects no recognition that judicial power, stripped of constitutional authority, is unnecessary, intrusive and potentially detrimental to the educational process.[40]

Certainly, perpetual supervision of the school system with its attendant costs in resources and stifled initiatives is not what the Court had in mind when it first sanctioned district court supervision of desegregation plans. *Dowell*, 111 S. Ct. at 637 ("[F]ederal supervision of local school systems was intended as a temporary measure to remedy past discrimination . . . [desegregation decrees] are not intended to operate in perpetuity.") This Court in *Dowell* also noted that:

> Dissolving a desegregation decree after the local authorities have operated in compliance with it for a reasonable period of time properly recognizes that "necessary concern for the important values of local control of public school systems dictates that a federal court's regulatory control of such systems not extend beyond the time required to remedy the effects of past intentional discrimination . . . ."

Id. An "incremental" approach to achieving the goals of desegregation recognizes the federalism interest in ending court supervision of matters that no longer require oversight, while focusing resources and attention on those facets of operations that require additional remedial action.

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[40] As Judge Edenfield noted in this case in 1977, "[q]uality educational systems are a fragile blessing, as many metropolitan areas have learned to their sorrow. When one is found it should not be harassed out of existence to satisfy fractional technicalities." Order (10/6/77), J.A. 110.

In the present case, the school district effectively eliminated the effects of the prior *de jure* segregated school system on student assignment through implementation of the district court's 1969 order. Racial balance in the schools subsequently shifted not in response to any action of the DCSS but in response to larger demographic changes. Pet. App. at 36a-48a. Those shifts in housing patterns occurred as a result of social and economic factors occurring outside of, and in spite of, the DCSS's continuing good faith compliance with the letter and spirit of its obligations under the decree. Ultimately, the decision below fails to recognize that "school officials who have taken effective action have no affirmative fourteenth-amendment duty to respond to the private actions of those who vote with their feet," *Ross* v. *Houston Indep. School Dist.*, 699 F.2d 218, 225 (5th Cir. 1983). Because the court of appeals has ordered massive affirmative equitable relief when there is no extant constitutional violation to justify that order, the judgment must be set aside and the district court's more circumscribed order upheld.

CONCLUSION

The judgment of the court of appeals should be vacated.

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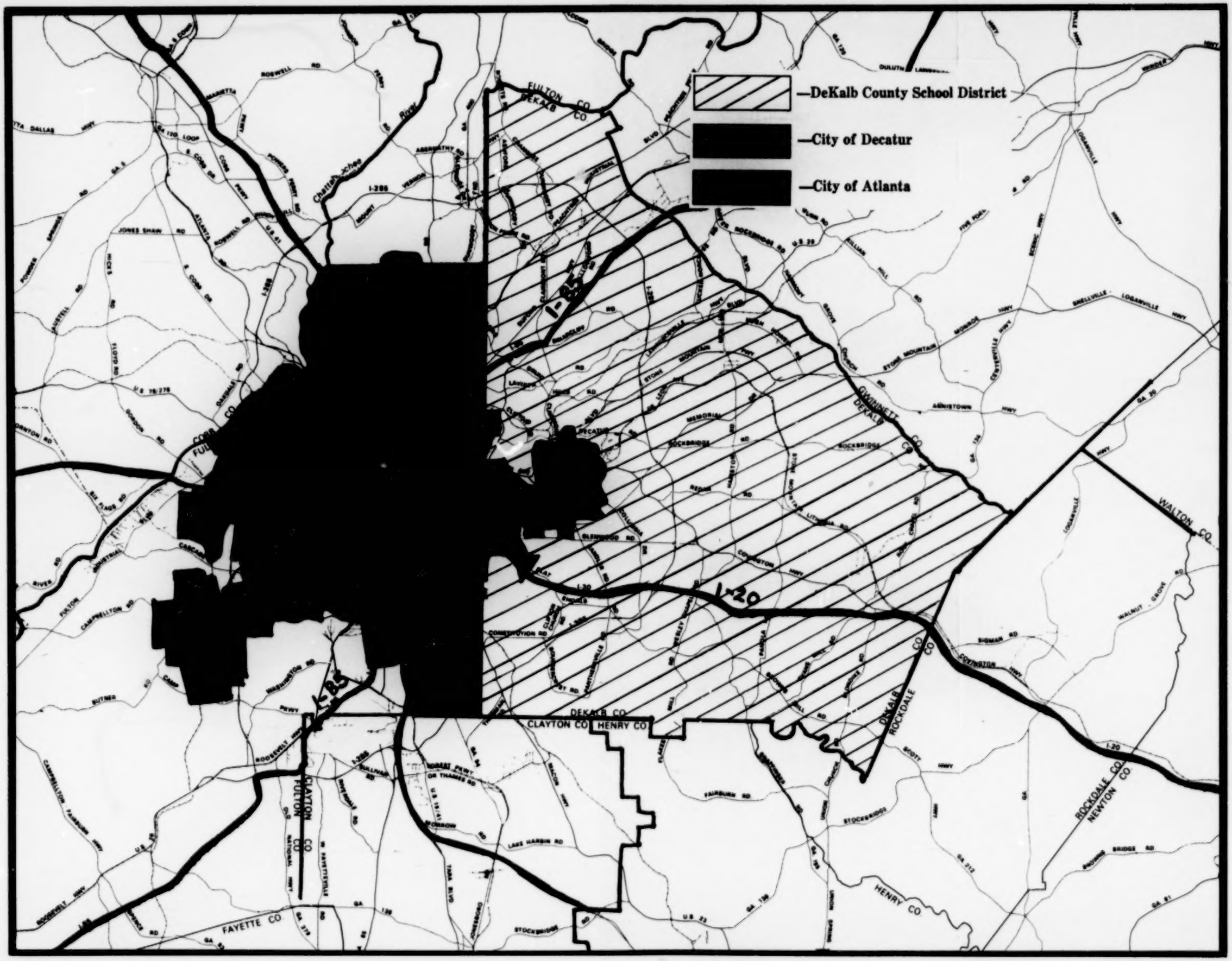
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WALTON CO
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GWINNETT CO
COBB CO

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iv

STATEMENT OF FACTS AND HISTORY OF THE CASE 1

A. Prior To 1954 And From 1954 To 1966, The DeKalb County School System (DCSS) Maintained Totally Segregated Schools 1

B. From 1966 To 1969, DCSS Did Not Desegregate Its Schools 1

C. The 1969 Court Order Did Not Desegregate DCSS Schools 1

D. From 1969 To 1975, Prior To The Major Demographic Change In DeKalb County, The School District, By Assignment Of Faculty, Staff, And Students, And By School Openings And Closings, Reinforced The System Of Segregated Schools 4

1. Student Assignment 4

2. Faculty And Staff Assignment 7

3. Facilities 10

E. From 1976 To 1985, When The Major Demographic Change Occurred In DeKalb County, DCSS Reinforced The Segregated System It Had Perpetuated And Expanded 12

1. Student Assignment 12

2. Faculty And Staff Assignment 14

Page

3. Facilities 14
4. Actions Taken By DCSS That Purported To Be Desegregative 15
   a. Majority To Minority Transfer Program. 15
   b. Magnet Program. 16
   c. Inaction. 16

F. At The Time Of Trial, In 1986, DCSS Was A Totally Segregated School System 16
1. Student Assignment 17
2. Faculty And Administrative Staff Assignment 17
3. Equality Of Education 18

SUMMARY OF ARGUMENT 19

ARGUMENT 23

I. THE DISTRICT COURT AND THE COURT OF APPEALS CORRECTLY FOUND THAT DCSS HAS NOT COMPLIED IN GOOD FAITH WITH ITS CONSTITUTIONAL OBLIGATIONS OR THE DECREES IN THIS CASE 23

II. THERE REMAIN VESTIGES OF SEGREGATION IN DCSS 26
   A. There Are Vestiges In Areas Other Than Student Assignment 26

Page

B. There Are Vestiges In The Area Of Student Assignment 27
1. Students In DCSS Today Are Racially Separate 27
2. The District Court's Finding That The Current Racial Separation Is Not A Vestige Was Wrong Because It Ignored The Interrelatedness Of The Factors That Contribute To Segregation ... 30
3. The District Court's Factual Finding Was Wrong Because It Failed To Apply The Legal Structure Required By This Court 37
4. The District Court's Failure To Follow The Proper Method Of Legal Analysis Led It To The Clearly Erroneous Factual Finding That Demographics Alone Caused The Current School Attendance Segregation 46

CONCLUSION 51

TABLE OF AUTHORITIES

Page

Cases

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(N.D.Ga. Sept. 24, 1979),
summ. aff'd, 448 U.S. 908 (1980) 43

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___ U.S. ___, 111 S.Ct. 630 (1991) . . . . . *passim*

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382 U.S. 103 (1965) 24, 29

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347 U.S. 483 (1954) 1, 32

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443 U.S. 449 (1979) . . . . . *passim*

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402 U.S. 33 (1971) 37, 40

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721 F.2d 1425 (5th Cir. 1983) 47

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443 U.S. 526 (1979) . . . . . *passim*

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391 U.S. 430 (1968) . . . . . *passim*

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Duval Co. Sch. Bd.,
883 F.2d 945 (11th Cir. 1989) 21

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687 F.2d 814 (6th Cir. 1982) 3, 47

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413 U.S. 189 (1973) . . . . . *passim*

Page

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616 F.2d 805 (5th Cir. 1980) 47

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444 F.2d 1400 (5th Cir. 1971) 44

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City Special Sch. Dist.,
839 F.2d 1296 (8th Cir.),
cert. denied sub nom. Arkansas Bd.
of Ed. v. Little Rock Sch. Dist.,
488 U.S. 869 (1988) 3

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433 U.S. 267 (1977) 28, 29, 32, 33

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391 U.S. 450 (1968) 26

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831 F.2d 313 (1st Cir. 1987) 3, 31, 43, 44

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427 U.S. 424 (1976) 30, 43

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755 F. 2d 1423 (11th Cir. 1985) 45

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868 F.2d 750 (5th Cir. 1989) 44

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391 U.S. 443 (1968) 26, 32, 44

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382 U.S. 198 (1965) 24, 29

Ross v. Houston Indep. Sch. Dist.,
699 F.2d 218 (5th Cir. 1983) 44

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Vaughns v. Bd. of Ed., 758 F.2d 983 (4th Cir. 1985) 44, 47

Vetterli v. United States District Court, 435 U.S. 1304 (1978) 43

Wright v. Council of Emporia, 407 U.S. 451 (1972) 26, 32, 33, 35, 37

Youngblood v. Bd. of Ed., 448 F.2d 770 (5th Cir. 1971) 44

Statutes and Regulations

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STATEMENT OF FACTS AND HISTORY OF THE CASE

A. Prior To 1954 And From 1954 To 1966, The DeKalb County School System (DCSS) Maintained Totally Segregated Schools

DCSS admits that prior to and for 12 years after this Court's decision in *Brown v. Board of Education*, 347 U.S. 483 (1954), declaring segregated schools unconstitutional, it maintained totally segregated schools. Pet.Br. at 2; Pet.App. 7a; J.A. 202, 209.

B. From 1966 To 1969, DCSS Did Not Desegregate Its Schools

In 1966, DCSS instituted a "freedom of choice" plan. J.A. 209. This plan "did not dismantle the dual systems." J.A. 210; Pet.App. 7a; Pet.Br. at 3. Thus, it was not until it was sued, 15 years after *Brown*, that DCSS finally agreed to desegregate.

C. The 1969 Court Order Did Not Desegregate DCSS Schools

In 1969, the district court ordered DCSS to desegregate. J.A. 61-70. By its terms, the court order did not contemplate that desegregation would be complete in 1969 and, when the 1969 school year began, DCSS was not, in fact, desegregated by student assignment or other facets of the school system.

The 1969 order contained a number of provisions that were applicable only to the school year 1969: (1) student assignment zones were set for that year only, J.A. 64-65; (2) school closings were set for that year only, J.A. 65; (3) the faculty assignment standard was to ensure only that black teachers were present in every school for 1969, J.A. 66. Other provisions of the 1969 order contemplated future action by the court and/or annual modifications: (1) it was contemplated that

assignment zones for future years might have to be modified and DCSS was required to report assignment patterns by race so that they could be reviewed annually, J.A. 68; (2) after the school board achieved the goal set for the first year of assuring that black faculty be present in every school, it was directed in subsequent years to "establish as an objective that the pattern of teacher assignment to any particular school not be identifiable as tailored for a heavy concentration of either Negro or white pupils in school," J.A. 67; (3) faculty assignment was to be reviewed annually to determine if modification of faculty assignment was necessary, J.A. 67-68; (4) future design and siting of new schools, as well as expansion of existing schools, were subject to review by the court to ensure that they were done "with the objective of eradicating segregation and perpetuating desegregation," J.A. 66, 68; (5) DCSS was to provide "remedial education programs which permit students . . . who have previously attended segregated schools to overcome past inadequacies in their education," J.A. 70. Furthermore, the court retained jurisdiction "for the purpose of implementing this order." J.A. 70.

The order, as implemented, left many schools racially identifiable because of student, faculty, and staff assignment. During the 1969 school year, there were 73 elementary schools in DCSS. The percentage of black students in the elementary school population as a whole was 6.2%. J.A. 269-359. By any measure, there was extreme separation of the black and white elementary school students:

	No. schools	% B's	% W's
Majority black	2	35%	1%
20% B or more	7	59%	6%
12.4% B or more	15	83%	14%
less than 1% B	46	1%	69%
All white	33	0%	50%

% B's means the percentage of all black students attending those schools

% W's means the percentage of all white students attending those schools

J.A. 269-359. Thus, in 1969, 64% of all schools were either all white or had more than twice as many black students as the systemwide average (12.4% is twice the systemwide average of 6.2%).[1] A majority of black students were in the 7 (10%) blackest schools.

There was similar separation of black and white high school students in 1969. J.A. 360-80. At the time, there were 19 high schools and black students were 4.8% of the high school population. J.A. 360-80. 59% of all black high school students, and 13% of all white students, were assigned to the four (21%) blackest high schools (more than 10% black) while only 3% of the

[1] A school need not necessarily be all black or even majority black to be identifiable as a black school. The most common measure of a racially identifiable school requires the court to look not just at student assignment, but also faculty and staff assignment, the history of the school, distribution of resources, and other factors. However, with respect to student assignment, this Court has approved and the lower courts have routinely applied a standard that condemns any school that varies widely from the systemwide average percentage of black students. For example, if the systemwide average is 30% black, courts will apply a standard referred to as "plus or minus 15%" that marks as possibly racially identifiable any school that is greater than 45% or less than 15% black. *Columbus Bd. of Ed. v. Penick*, 443 U.S. 449, 455 & n.3 (1979); *Little Rock Sch. Dist. v. Pulaski City Special Sch. Dist.*, 839 F.2d 1296 (8th Cir.), *cert. denied sub nom. Arkansas Bd. of Ed. v. Little Rock Sch. Dist.*, 488 U.S. 869 (1988)(± 6%); *Kelley v. Metro. Co. Bd. of Ed.*, 687 F.2d 814 (6th Cir. 1982), *cert. denied*, 459 U.S. 1183 (1983)(±15%); *Morgan v. Nucci*, 831 F.2d 313, 320 (1st Cir. 1987); *U.S. v. South Bend Community Sch. Corp.*, 511 F.Supp. 1352 (N.D.Ind. 1981), *aff'd*, 692 F.2d 623 (7th Cir. 1982)(±15%). Obviously, if the systemwide average percentage of black students is very small, as it was in DeKalb in 1969, a school with a smaller variance would be seen as racially identifiable and thus the percentage of permissible variance should be less.

black high school students, and 44% of the white students, were assigned to the seven (37%) whitest high schools (less than 1% black). J.A. 360-80.

Although the 1969 court order required complete desegregation of DCSS, DCSS largely failed to implement those aspects of the order dealing with faculty and staff assignment and remedial education. Black faculty continued to be disproportionately assigned to schools that were identifiably black by student assignment. Seven (10%) of the elementary schools had no black faculty at all, contrary to the court's order. J.A. 279, 281, 288, 290, 303, 318, 332. Four of those schools had no black students. J.A. 279, 281, 318, 332. The systemwide percentage of black teachers was 7%. J.A. 269-359. 21% of the black teachers and 10% of the white teachers were assigned to the 7 elementary schools that were more than 20% black by student assignment. J.A. 269-359. Again, high schools showed a similar pattern. 28% of the black teachers and 16% of the white teachers were assigned to the 4 blackest high schools. J.A. 360-80. Thus, from the outset, DCSS reinforced the racial identity of the schools by its faculty assignments, over which it had complete control. There is no evidence that any remedial education was ever provided as ordered by the court.

D. From 1969 To 1975, Prior To The Major Demographic Change In DeKalb County, The School District, By Assignment Of Faculty, Staff, And Students, And By School Openings And Closings, Reinforced The System Of Segregated Schools

1. Student Assignment

The largest change in the demographic population in DeKalb County occurred between 1975 and 1980. J.A. 259, 260, 214-15; Tr. July 6, 1987 at 52-54. However, it was between 1969 and 1975, prior to the massive demographic change, that the primary increase in racial

segregation in DCSS schools occurred. J.A. 253. Between 1969 and 1975, using various measures of racial identifiability, the number of racially identifiable elementary schools (of the between 73 and 82 total schools) dramatically increased:

	'69	'70	'71	'72	'73	'74	'75
90%+ B	0	1	1	2	3	4	5
50%+ B	2	2	3	5	8	12	12

90%+ B means schools with more than 90% black students

50%+ B means schools with more than 50% black students

J.A. 269-359.

High schools showed similar changes. J.A. 360-80. By 1972, one high school was over 70% black, J.A. 368, in a system that was then 7.6% black. J.A. 360-80. By 1974, there were two majority black high schools. J.A. 368, 380. The number of white (less than 1% black) high schools remained roughly constant at 6-8. J.A. 360-80.

The percentage of students who attended racially identifiable schools also increased dramatically between 1969 and 1975:

Elementary Schools

	'69	'70	'71	'72	'73	'74	'75
%B/MB	35	34	44	55	64	74	73
%W/MB	1.3	0.8	0.8	1.6	2.6	3.7	2.6

High Schools

	'69	'70	'71	'72	'73	'74	'75
%B/MB	0	0	0	39	40	53	51
%W/MB	0	0	0	1.2	0.6	1.8	1.3

%B/MB means the % of all black students in

majority black schools
%W/MB means the % of all white students in majority black schools

J.A. 269-380.

In short, by 1975, prior to the large-scale demographic changes that petitioners now rely on as their principal defense, segregation in DCSS schools was more extreme than it had been in 1968 under the failed "freedom of choice" plan. DCSS's principal expert witness offered a measure of segregation/desegregation called the relative exposure index. J.A. 629-30. This index is a "measure . . . of the interracial contact or the exposure of one group to another . . . ." J.A. 575. According to DCSS's expert, an index of 100 marks a totally segregated school system; an index of 0 marks a totally desegregated school system. By this index, the vast majority of the increase in segregation in DCSS occurred in 1969-1975. During this period, the relative exposure index increased from 22.7 to 57.2, which is 3 points worse than its pre-1969 level of 53.9. J.A. 253; *see also* J.A. 255, 258.

Similarly, under the failed freedom of choice plan in effect in 1968, 68% of the black elementary school students attended majority black schools. J.A. 209-10; Pet. App. 7a; Pet.Br. at 3; D.Exh. 193. By 1974, 5 years after the order was issued, 74% of black elementary school students attended majority black schools. J.A. 269-359.

Furthermore, the racial identifiability of schools increased more quickly than the increase of black students during this critical period from 1969-1975. From 1969 until 1975, the percentage of black elementary students in the school district increased from 6.2 to 19.6. J.A. 253. The percentage of black elementary school students in majority black schools increased at a much faster rate, from 35% to 73%. J.A. 269-359. Similarly, the percentage of black high school students went from

4.8% to 13.9%. J.A. 253. The increase of black high school students in majority black high schools from 0% to 51% was also more rapid than their increase in the system. J.A. 360-80.

2. Faculty And Staff Assignment

In 1976, the district court found that DCSS had never sufficiently desegregated faculty and staff and ordered DCSS to utilize reassignment of teachers and principals to achieve that goal. J.A. 75-76 ("Those schools with the highest percentage of black teachers generally also have the greatest predominance of black students"); J.A. 85, 94, 96-97, 226-27.

There is no question that faculty segregation tracked student segregation:

Elementary Schools

	'69	'70	'71	'72	'73	'74	'75
Black sch.	2	2	3	5	8	12	12
White sch.	46	47	51	45	41	38	33
BT/B sch.	9	10	9	20	25	55	42
WT/B sch.	3	3	4	6	10	12	12
BT/W sch.	52	45	44	31	34	19	25
WT/W sch.	64	63	63	57	53	50	42

High Schools

	'69	'70	'71	'72	'73	'74	'75
Black sch.	0	0	0	1	1	2	2
White sch.	7	6	6	7	8	7	6
BT/B sch.	0	0	0	23	15	42	29
WT/B sch.	0	0	0	4	4	5	6
BT/W sch.	39	27	20	15	25	11	16
WT/W sch.	40	36	36	37	43	39	31

Black sch. means the number of black (majority) schools

White sch. means the number of white (less than 1% black) schools
BT/B sch. means the % of black teachers in the black schools
WT/B sch. means the % of white teachers in the black schools
BT/W sch. means the % of black teachers in the white schools
WT/W sch. means the % of white teachers in the white schools

J.A. 269-380. Thus, at a time when the percentage of black teachers systemwide was increasing (in the elementary schools from 7% to 13%), the percentage of black elementary school teachers assigned to black schools increased four-fold and the percentage of black teachers assigned to white elementary schools decreased by half. J.A. 269-359.

Further, the evidence shows that in many instances, DCSS disproportionately assigned black teachers to schools in a self-fulfilling prophecy that the school was about to become black by student assignment. For example, the large increase in the percentage of black students in Gresham Park Elementary School from 1971 to 1972 was preceded by a large increase in black faculty assigned to that school from 1970 to 1971. J.A. 298. In 6 of the 7 elementary schools that became majority black by 1975, and for which complete data exists, there was a large increase in the number and percentage of black faculty in the year or two prior to the large increase in the percentage of black students. J.A. 295, 298, 310, 320, 342, 351. *But see* J.A. 285. The same phenomenon occurred in the high schools. For example, the large increase in black students in Walker High School was preceded by a more than doubling of the number of black teachers. J.A. 380.

3. Facilities

Between 1969 and 1975, DCSS opened 13 new elementary schools. J.A. 269-359. Despite the court's 1969 order that "in locating and designing new schools" DCSS "do so with the objective of eradicating segregation and perpetuating desegregation," J.A. 66, DCSS's school opening and closing of schools had precisely the opposite effect. The elementary schools opened in that period include 5 of the 8 schools that are now less than 5% black: Austin, 1%; Livsey, 2%; Vanderlyn, 3%; Kingsley, 3%; Rockbridge, 4%. J.A. 272, 311, 316, 353, 337, 269-359. (In 1975, these 5 schools had a total of 4 black students.) The elementary schools opened from 1969 to 1975 also include 3 of the 18 schools that are now 90% or more black. J.A. 274, 282, 333, 269-359. Thus, of the 13 elementary schools opened after the court order, 8 are either virtually all white or virtually all black. J.A. 269-359. Not one of the 13 schools opened between 1969 and 1975 has become nonracially identifiable (defined as a school that is plus or minus 20% from the average percent black systemwide; for 1986, nonidentifiable elementary schools would be those with between 34.9% and 74.9% black students). Of the two high schools opened between 1969 and 1975 (none was closed), one is now 2% black (the whitest high school in DCSS); the other is now 92% black, one of five high schools now more than 90% black. J.A. 367, 361, 360-80.[2]

In 1976, the district court found that two school openings perpetuated and even accelerated segregation. J.A. 76-79. Cedar Grove Elementary School and Cedar Grove High School opened in 1975 and 1972 respective-

[2] DCSS closed 10 elementary schools between 1969 and 1975. J.A. 269-359. The schools that were closed were often located in the center and eastern parts of the county. Those opened were located on the periphery of the county, and thus certain to remain racially identifiable.

ly. J.A. 77-79. During the next several years, DCSS siting and boundary decisions created new white schools adjacent to old and now black schools. In reviewing this phenomenon, the district court wrote:

> the influx of black families and departure of white families accounted for some of the increase. But the redrawing of attendance lines . . . must have contributed somewhat to this dramatic increase. Additionally, it must be said that the total effect of the horizontal boundary lines drawn to accommodate these three elementary schools was to ensure that one predominantly white school, Cedar Grove, would remain predominantly white for a number of years . . . [It] perpetuat[ed] a dual system.

J.A. 89.[3] The court further found that DCSS had less segregative alternatives for at least some of the attendance boundary changes it instituted, and had "not adequately met the heavy burden of explaining the alternatives chosen which tended to hinder, rather than further, desegregation." J.A. 91.[4]

In short, from 1969 to 1975, DCSS not only did not desegregate the schools but, through faculty and staff assignment, school openings and closings, and student assignment policies, actively perpetuated and expanded the amount of segregation in DCSS schools. Thus, at the time the greatest demographic change began, DCSS already had 12 majority black elementary schools that contained 73% of the black elementary students. It had 2 majority black high schools that contained 51% of the black high school students. Teachers and staff were disproportionately assigned on the basis of race.

[3] Cedar Grove Elementary School remained predominantly white until 1978, at which time Clifton and Meadowview were over 80% black. J.A. 282, 285, 320. Cedar Grove High School remained predominantly white until 1979, at which time both Gordon and Walker were over 90% black. J.A. 361, 368, 380.

[4] The district court at the time refused to take action because it said "an injunction against . . . [the boundary changes] at this point in time would be meaningless" and because it believed the segregation caused by DCSS had become more difficult to cure. J.A. 78, 79, 92. A biracial committee was set up to oversee future boundary changes. J.A. 92.

E. From 1976 To 1985, When The Major Demographic Change Occurred In DeKalb County, DCSS Reinforced The Segregated System It Had Perpetuated And Expanded

1. Student Assignment

Between 1975 and 1980, the most significant residential demographic change involving race occurred in the school district. J.A. 259, 260, 215; Tr. July 6, 1987 at 52-54. In southern DeKalb, where the racially identifiable black schools were located, the black population increased and the white population decreased. J.A. 259, 215. For the first time, the number of white residents decreased in the entire district while the number of black residents increased at an even greater rate than in prior years. J.A. 259-60. From 1975 until 1985, the percentage of black students increased from 17 to 45. D. Exh. 193.

Despite these demographic changes, the percentage of all black students attending majority black schools, which had increased dramatically from 1969 to 1975, remained relatively constant from 1975 to 1985:

	'69	'75	'76	'77	'78	'79	'80	'81	'82	'83	'84	'85
E	35	73	78	79	75	83	81	81	78	78	76	75
H	0	51	70	66	68	69	74	81	76	72	68	63

E means the % of all black elementary students in majority black schools

H means the % of all black high school students in majority black schools

J.A. 269-380.

The relative exposure index, which had increased so dramatically from 1969 to 1975, barely changed. It went from 57.2 in 1975 to 57.8 in 1980, and thereafter began to decline. J.A. 253.

However, because the number of black students increased from 1976 to 1986, the number of black schools increased:

	'76	'77	'78	'79	'80	'81	'82	'83	'84	'85
90% B	8	10	12	15	15	15	18	12	1	23
50% B	17	18	20	26	27	29	29	30	30	32

90% B means schools with more than 90% black students

50% B means schools with more than 50% black students

J.A. 269-380.

In addition, the segregation deepened as more black students attended the increasing number of schools that were at least 90% black:

	'69	'75	'76	'77	'78	'79	'80	'81	'82	'83	'84	'85
E	0	41	49	57	53	58	54	51	59	60	58	60
H	0	31	28	24	39	53	49	47	43	40	35	49

E means the % of all black elementary students in schools more than 90% black

H means the % of all black high school students in schools more than 90% black

J.A. 269-380.

In short, the most dramatic demographic changes, which occurred between 1975 and 1985, did not cause DCSS's schools to become segregated; they were

already segregated. The changes did further cement the vestiges of segregation.

2. Faculty And Staff Assignment

Between 1975 and 1985, DCSS continued its pattern of assigning black teachers and staff to black schools and white teachers and staff to white schools, in spite of the court's second order to the contrary and repeated reminders by the black community of the need to correct the situation. J.A. 660-61, 697-98. Again, faculty assignment by race correlated perfectly with student assignment by race. For every single year, the percentage of all black teachers assigned to black schools was greater than the percentage of all white teachers assigned to those black schools. J.A. 269-380.

Further, the evidence again shows that in many instances, DCSS disproportionately assigned black teachers to schools in a self-fulfilling prophecy that the school was about to become black by student assignment. For example, DCSS signaled that Fairington was to become a black school from 1977 to 1978 by increasing the number of black teachers; Fairington began a large increase in the percentage of black students the following year. J.A. 293. In Indian Creek, the 1977 to 1978 increase in black teachers was followed by a 1978 to 1979 increase in black students. J.A. 307. Towers High School's large increase in the percentage of black students (1976-1977) was preceded by a large increase in the number and percentage of black teachers (1975-1976). J.A. 378. *See also* J.A. 271, 280, 361, 376.

3. Facilities

Despite the massive demographic changes that occurred from 1976 to 1986, there was only one elementary school opened, J.A. 269-359, while eight were closed. J.A. 269-359. Thus, 72% of all elementary school openings and closings occurred before the demographic changes occurred. The location of DCSS's facilities was

largely fixed prior to 1976.

4. Actions Taken By DCSS That Purported To Be Desegregative

a. Majority To Minority Transfer Program. In 1972, DCSS unilaterally instituted a transfer program, in violation of the 1969 order that prohibited all transfer programs. J.A. 65-66, 80. The DCSS transfer program permitted transfers that were supposed to have a desegregative effect and is referred to as an "M to M" [majority to minority] program because it permits only transfers of students from schools where they are in the racial majority to schools where they are in the minority. J.A. 216. By 1975, it was affecting only 94 (one tenth of one percent) of the 82,526 students. J.A. 75. In that year, the district court found that three of the rules DCSS set to govern the M to M program imposed "impermissible burdens upon those students wishing to take part in the program, discouraging widescale use of this desegregation tool." J.A. 80. It ordered substantial changes in the program and it was only after these court ordered changes that the program began to affect more students. J.A. 92.

Even by 1986, however, the M to M program only involved the transfer of 4194 students (6%) of whom 4167 (99.4%) were black and 27 (0.6%) were white. J.A. 216-17, 253, 473-75. Almost the entire burden of the desegregation caused by the M to M program has been borne by black students. J.A. 473-75, 571, 593, 668, 704. The M to M program has not made the blackest schools less black,[5] J.A. 668, and at best only very marginally affected the whitest schools. J.A. 665-67, 810-11, 869. Further, although white and black bus drivers equally drove regular students in the district, drivers assigned to drive the black M to M students were disproportionately black. J.A. 659.

b. Magnet Program. In the 1980's, DCSS began a magnet program that, as of the time of trial, affected portions of only seven schools and fewer than 1% of the system's students. Pet.App. 24a, n.16; J.A. 217. The magnet program was a direct result of actions of the district court. J.A. 689. DCSS at trial promised future magnet programs, but had previously refused requests that the magnet program be expanded further. J.A. 217, 705.

c. Inaction. The district court found in 1988 that DCSS "might have been able to do something more" to desegregate and had not achieved "maximum practical desegregation" with respect to student assignment. J.A. 221, 224. It nonetheless refused to issue additional orders in light of DCSS's promise to take further desegregative acts and because "the cut-off date for evidence . . . would be the 1986-87 school year." J.A. 224.

F. At The Time Of Trial, In 1986, DCSS Was A Totally Segregated School System

The facts found by the district court and affirmed by the court of appeals illustrate that DCSS today has disproportionately assigned black students, black faculty, and black administrative staff to one set of schools. The same set of schools have higher teacher turnover, less experienced teachers, fewer library books, and have been

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[5] Q. Isn't it fair to say though that basically for all the kids in the southwest area of the county [racially identifiable black schools] they have two choices, a segregated education or getting on an M-to-M bus?

(continued...)

[5] (...continued)

A. I guess you could say that.

J.A. 668 (testimony of Mary Durr, DCSS administrator of the M to M program).

given fewer resources than the other set of schools that are white by student, faculty, and staff assignment.

1. Student Assignment

As described by the district court:

> (1) 47% of the students attending the DCSS are black; (2) 50% of the black students attended schools that were over 90% black; (3) 62% of all the black students attended schools that had more than 20% more blacks than the systemwide average; (4) 27% of white students attended schools that were more than 90% white; (5) 59% of the white students attended schools that had more than 20% more whites than the systemwide average; (6) of the 22 DeKalb County high schools, five have student populations that are more than 90% black, while five other schools have student populations that are more than 80% white; and (7) of the 74 elementary schools in the DCSS, 18 are over 90% black, while 10 are over 90% white.

J.A. 208, 786-87; Pet.App. 4a.

2. Faculty And Administrative Staff Assignment

The district court and the court of appeals found that as of the time of trial and in every preceding year, DCSS violated the requirements of the law and the court's 1969 and 1976 orders by assigning faculty in a manner that identified some schools as "'intended for Negro students or white students.'" J.A. 226-31, 425, 530-35, 543-44, 745-48, 751-52, 837; Pet.App. 5a, 17a. Teacher segregation that identified schools as black or white schools had worsened over the prior three years. J.A. 226-31. The court further found that assignment of principals and administrators was racially skewed. J.A. 231-34, 843-44; Pet.App. 4a-5a. Those findings were correct[6] and are not challenged in this Court. J.A. 483.

3. Equality Of Education

The district court found that DCSS consistently assigned to black schools teachers with less teaching experience and fewer advanced degrees than white schools. J.A. 243, 511-18, 538-39, 737-39, 749-50, 758-760, 855-56; Pet.App. 5a. The court also found that black schools had more teacher turnover than white schools.[7] J.A. 244, 519-22, 538-39, 740-41, 750-51, 756-57. The court found that black school libraries had fewer books than white school libraries.[8] J.A. 245, 523-24, 538-39, 741-42. The court found that DCSS spent less per pupil at the black schools. J.A. 247-48, 525, 538-39, 742-43; Pet.App. 6a; *see generally* J.A. 733-85. Moreover, DCSS had been aware of these disparities and done nothing to correct them.[9] J.A. 701-04.

This disparity in resources on the basis of race was not apparent in 1976. J.A. 74-75. By 1979, it was, J.A. 716-17. By 1986, it was uniform and striking. Thus, DCSS responded to the increasing segregation in its

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[6] For example, in elementary schools that are more than 80% black by student attendance, 60% of the administrators are black. In elementary schools that are less than 20% black by student assignment, 5.7% of the administrators are black. J.A. 483. The same pattern exists in high schools. Those more than 80% black have 63% black administrators and those less than 20% black have 15% black administrators. J.A. 483. Charts dramatically showing the disparity in faculty assignment and staff are contained at J.A. 530-35.

[7] The court found that in 1986 DCSS began a program to try to control this factor and ordered no relief. Pet.App. 68a.

[8] The court excused this disparity as "not the result of purposeful conduct by the defendants." Pet.App. 68a.

[9] The evidence at trial showed that $341 per year more was spent for each student in the white schools, a difference of 13.7%. In an elementary school with 800 children, this differential totals almost $275,000 -- enough to fund ten extra teachers.

schools by decreasing resources provided to black schools and students and increasing resources provided to white schools and students.

SUMMARY OF ARGUMENT

In *Board of Ed. v. Dowell*, ___ U.S. ___, 111 S.Ct. 630, 637-638 (1991), this Court said that a two part inquiry should be used to determine if a school district has desegregated sufficiently to be relieved of further responsibility to desegregate: First, did the school district comply in good faith with the court order; and second, do there remain vestiges of segregation?

The undisputed holdings of the district court and the court of appeals are that DCSS has not met either of this Court's *Dowell* tests. In particular, DCSS has not complied with the desegregation order of 1969. Two of the easiest parts of a school system to desegregate, because they are largely under the control of the school system, are faculty and staff assignment. Even though almost 20 years have passed, and despite two orders of the district court, DCSS has still not desegregated faculty and staff. Furthermore, it has not only provided separate schools, but unequal schools, taking resources and expertise out of the schools it identified as black by its faculty and staff assignment and putting them in the schools it identified as white. In addition, there remain vestiges of segregation, at least in the areas of faculty and staff assignment and unequal education.

Because DCSS cannot escape these findings, it argues that they are irrelevant. To do so, it makes two arguments, both of which must be accepted in order to escape the conclusion that, under *Dowell*, DCSS must continue its efforts to eliminate segregation "root and branch." First, DCSS asserts that the so-called *Green* factors, used by this Court for two decades to identify vestiges of prior segregation, *see Green v. County School*

Board, 391 U.S. 430 (1968), are unrelated to each other and can be remedied separately. That argument is contrary to this Court's holdings. *Keyes v. School District*, 413 U.S. 189, 213-14 (1973). On numerous occasions, this Court has emphasized the interrelatedness of the *Green* factors in recognition of the common sense notion that when a school district identifies a school as a black school or a white school by one of the *Green* factors (such as faculty or staff assignment or resource allocation), that racial identification will have an effect on other factors (such as student assignment). The facts of this case illustrate that the *Green* factors did operate together in DeKalb County. Nevertheless, the district court failed even to consider the possibility that the *Green* factors might be operating in a related fashion. The proper question in this case is thus not that posed by DCSS -- whether it was legal error to consider the *Green* factors separately, but the exact opposite -- whether it was legal error to refuse to consider them together.

Second, DCSS argues that, in looking at the factor of student assignment in isolation, a school district may be relieved of its duty ever to desegregate if it can stall long enough so that it can then argue that intervening residential demographic change in the district has broken the causal link between current racial separation and past intentional segregation. DCSS relies on a factual finding of the district court that that is what occurred in this case. Not only was the district court's factual finding tainted by its failure to consider the interrelated nature of the *Green* factors, it was also tainted by the court's failure to conduct the analysis required by this Court's decisions in determining whether vestiges of segregation remain. In particular, the court failed to place the burden of proof on the school district, failed to apply the court's presumption that current segregation was caused by prior segregation, failed to give any weight to -- much less apply the required presumption to -- the all black and all white schools in DeKalb, required a showing of

intentional segregation, failed to require DCSS to meet any affirmative duty to desegregate, failed to consider inaction as evidence of continuing violations, excluded from consideration remedial measures approved by this Court, and failed to examine carefully school construction and siting. Only because it rejected virtually all of the principles established by this Court for school desegregation cases was the court able to reach its factual conclusion that current student assignment had been caused by demographic change rather than school segregation. And, because its analysis was flawed, its conclusion was simply wrong.

The sad truth is that today, as in 1954 and in 1968, DCSS's schools are both separate and unequal. Due to DCSS's student and faculty and staff assignment decisions, black students attend schools that are identifiably black schools. DCSS assigns those black schools less money per pupil and fewer other resources than the schools that are white by student, faculty, and staff assignment. Furthermore, DCSS has never been fully desegregated. Notwithstanding DCSS's frequent intimations to the contrary, neither the district court nor the court of appeals found that DCSS had desegregated the schools in 1969 or subsequent years sufficiently to meet its constitutional obligations, even with respect to student assignment. J.A. 211, Pet.App. 23a. DCSS's long delay in complying with its constitutional obligations ought not to be rewarded. It is long past time that DCSS must be required to provide a constitutional school system.

ARGUMENT

I. THE DISTRICT COURT AND THE COURT OF APPEALS CORRECTLY FOUND THAT DCSS HAS NOT COMPLIED IN GOOD FAITH WITH ITS CONSTITUTIONAL OBLIGATIONS OR THE DECREES IN THIS CASE

In *Bd. of Ed. v. Dowell*, 111 S.Ct. at 637-38, this Court held that there were two inquiries to be made in determining whether a school district had "made a sufficient showing of constitutional compliance." The first inquiry is whether the school district complied in good faith with its court imposed obligations. *Id.* In at least three areas -- faculty assignment, staff assignment, and resource allocation -- the uncontested findings are that DCSS did not. Moreover, where matters are totally within a school system's control, they provide a revealing measure of a system's good faith or lack thereof. *United States v. Montgomery Co. Bd. of Ed.*, 395 U.S. 225, 232 (1969); *Jacksonville Branch, NAACP v. Duval Co. Sch. Bd.*, 883 F.2d 945, 951 (11th Cir. 1989). Here, the evidence overwhelmingly shows that DCSS has not complied in good faith with the district court's desegregation orders.

First, the 1969 order required that there be black teachers in every school in 1969. J.A. 66. There were no black teachers in 10% of the schools in 1969. J.A. 279, 281, 288, 290, 303, 318, 332. The 1969 order required that in future years, "the pattern of teacher assignment to any particular school not be identifiable as tailored for a heavy concentration of either Negro or white pupils in school." J.A. 67. In 1976, the district court found that DCSS had "not taken adequate steps to utilize reassignment of teachers to reduce the racial identifiability of faculty . . . ." J.A. 85. The court found that the reason for DCSS's failure to comply with its 1969 order was "the reliance on the replacement process, and the avoidance of reassignments . . . ." J.A. 85. It

ordered that "reassignment of teachers must be utilized" to achieve compliance with the 1969 order that teacher assignment not be used to create or perpetuate racially identifiable schools. J.A. 85-86, 94. In 1986, the court again found that DCSS had not complied with the 1969 order and was still assigning teachers in a manner that identified some schools as black schools and other schools as white schools. J.A. 226. It further found that DCSS had not complied with the 1976 order: "There was no evidence . . . that after . . . the order . . . defendants reassigned their teachers . . . DCSS has continuously relied upon the replacement process" to achieve desegregation. J.A. 227-28. The facts fully support that conclusion, J.A. 269-359, 425, 530-55, 543-44, 745-48, 751-52, 837; the court of appeals affirmed it; and DCSS does not contest it here. Pet.App. 5a, 17a.

Second, the 1969 order required that staff be "reassign[ed] . . . to eliminate the effects of the dual school system." J.A. 67. In 1976-1977, the district court found that staff had not been reassigned to eliminate the effects of the dual school system and ordered again that DCSS do so. J.A. 96-97. In 1986, the district court found that staff assignment, including principals and other senior administrative staff, still served to identify schools as black schools or white schools. J.A. 231-34. The facts fully support that conclusion, J.A. 96-97, 231-34, 843-44; the court of appeals affirmed it; and the DCSS does not contest it here.

Third, the 1969 order required that DCSS not discriminate against black students and that schools be equalized in every area. J.A. 64, 69.[10] The district court

[10] The order required equalization of formerly all black schools, all of which were closed. J.A. 69, 65. However, rather than viewing that portion of the order as "[bearing] no relation to DCSS," *see* Pet.Br. at 4 n.5, it should be read, as the district court apparently did, in con-
(continued...)

found that DCSS discriminatorily assigns greater resources to white schools and fewer resources to black schools. J.A. 243. The facts fully support that conclusion. J.A. 511-18, 519-25, 538-39, 737-43, 749-51, 756-60, 855-56; it was affirmed by the court of appeals; and DCSS does not contest it here. Pet.App. 5a.

Fourth, the 1969 order required remedial education to students previously educated in all black schools. J.A. 69. There is no evidence that DCSS has ever complied with this portion of the order. *See also* J.A. 669-72.

Thus, in a number of respects, the uncontested findings of the district court, affirmed by the court of appeals, are that DCSS has not complied in good faith with the 1969 order to desegregate, or with the 1976 order repeating portions of the 1969 order.

DCSS has also defied this Court's orders. In *Green v. County School Board*, 391 U.S. 430, this Court held that "[i]n determining whether respondent School Board met that command [to dismantle well-entrenched dual systems] . . . it is relevant that this first step did not come until some 11 years after *Brown I* was decided and 10 years after *Brown II* directed the making of a 'prompt and reasonable start.'" *Id.* at 437-38. In this case, DCSS delayed a year longer than the school board in *Green* even in adopting the "freedom of choice" plan found in-

[10] (...continued)
junction with the anti-discrimination clause, J.A. 64, and the purposes of the decree to prohibit assignment of unequal resources on the basis of race to any school. Thus, the district court found that DCSS's current practice of providing fewer resources to black schools was a violation of the obligation created by *Brown* and the 1969 order. J.A. 248. DCSS no longer contests that finding. Pet.Br. at 17 n.19. Respondents agree with petitioners that DCSS's efforts since the trial to cure the inequalities found by the district court, like the efforts to cure discriminatory faculty and staff assignment, are before the district court. *Id.* Respondents sharply disagree that, since 1986, DCSS has cured those violations.

adequate there and here. J.A. 202, 209-10. It was only when HEW applied serious pressure and the district court entered an order, that DCSS even purported to adopt a serious desegregation plan. J.A. 61, 202. "This deliberate perpetuation of the unconstitutional dual system can only have compounded the harm of such a system." *Green*, 391 U.S. at 438.[11]

Measured by the first of the *Dowell* factors, good faith compliance with the court orders, DCSS must surely be found wanting.[12]

II. THERE REMAIN VESTIGES OF SEGREGATION IN DCSS

A. There Are Vestiges In Areas Other Than Student Assignment

In *Dowell*, this Court held that:

> In considering whether the vestiges of *de jure* segregation had been eliminated as far as practicable, the District Court should look not only at student assignments, but "to every facet of school operations -- faculty, staff, transportation, extra-curricular activities, and facilities." *Green*, 391 U.S., at 435. *See also Swann*, 402 U.S. at 18 ("[E]xisting policy and practice with regard to faculty, staff, transportation, extra-curricular activities, and facilities" are "among the most important indicia of a segregated system.")

111 S.Ct. at 638. As noted, the district court found that two of these five facets of school operations, faculty assignment and staff assignment, remain vestiges of a segregated system. The district court also found that the unequal education now being provided by DCSS to students in black schools is a vestige of a segregated system.[13] Thus, apart from student assignment, by at least three of the most important indicia of a segregated system, DCSS is a segregated school system today.

B. There Are Vestiges In The Area Of Student Assignment

1. Students In DCSS Today Are Racially Separate

The Constitution "does not require, as a matter of substantive constitutional right, any particular degree of racial balance or mixing." *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 24 (1971). However, in the context of remedy, the Court has always begun its inquiry into the vestiges of segregation by looking at the separateness of the assignment of black and white students. Thus, in *Swann*, the Court concluded that a "free transfer" plan had failed to eliminate vestiges of segregation, after noting only that the plan

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[11] It is also surely relevant that the duty to desegregate faculty and staff was clear at least as of 1965, *Bradley v. School Bd.*, 382 U.S. 103 (1965); *Rogers v. Paul*, 382 U.S. 198 (1965); and that the duty to provide equal education was clear even before *Brown*. J.A. 244.

[12] In this section, respondents discuss only those areas of noncompliance specifically found by the district court or undisputed. Other areas of noncompliance with the 1969 order and the commands of the Constitution abound, but the district court's findings in those areas were tainted by its legal errors and, where contrary, were generally incorrect. *See* sections II.B.2-B.4, *infra*.

[13] Respondents agree that it is unnecessary to determine whether this unequal education should be considered a new factor in addition to the six identified in *Green* or as part of one or more of the *Green* factors. J.A. 237, n.14; Pet.App. 14a. All parties agree that it is appropriate to consider the equality of education as one factor in determining whether all vestiges of segregation have been eliminated. J.A. 206, 237; Pet.App. 14a. Respondents also agree, and DCSS appears to now concede (after previously arguing that providing vastly greater resources to white students was irrelevant unless plaintiffs could show that it affected learning), that "[w]hether a racial skew of resources affects a child's learning potential is irrelevant . . . ." Pet.App. 67a.

left two-thirds of the black students in black schools. 402 U.S. at 7. Similarly, one of the primary reasons in this case for concluding that the "freedom of choice" plan failed to eliminate vestiges of segregation was that it left most black students in black schools. J.A. 210. *See also Green*, 391 U.S. at 433; *Raney v. Board of Education*, 391 U.S. 443, 446 (1968); *Monroe v. Board of Commissioners*, 391 U.S. 450, 457 (1968); *Wright v. Council of Emporia*, 407 U.S. 451, 464 (1972).

66% of all black elementary students attend majority black schools, J.A. 269-359;[14] 50% of all black students attend virtually all black schools, J.A. 208; 62% of all black students and 59% of all white students attend schools whose percentage of black students is either 20% more or 20% less than the systemwide average, J.A. 208.

The district court nevertheless cited the racial separation of DeKalb students dismissively in a section describing plaintiffs' contentions, "[p]laintiffs improperly place great emphasis on the concept of racial balance," and not again thereafter. J.A. 207-08. Respondents agree that "[t]he fact that a school board's desegregation plan leaves some disparity in racial balance . . . does not alone make that plan unacceptable." *Wright*, 407 U.S. at 464. However, it was surely error to conclude, as the district court did, that it is irrelevant to determining whether vestiges of segregation remain in a school district that is under court order to desegregate. *Id.* at 464 (*some* disparity . . . does not *alone* . . .")(emphasis added); *Swann*, 402 U.S at 26 ("there is a presumption against schools that are substantially disproportionate . . . .").

[14] In 1968, under the "freedom of choice" plan that DCSS admits was unsuccessful in desegregating the schools, 63% of the black elementary school students attended majority black schools. D.Exh. 193.

2. The District Court's Finding That The Current Racial Separation Is Not A Vestige Was Wrong Because It Ignored The Interrelatedness Of The Factors That Contribute To Segregation

Because racial separation does not automatically establish that vestiges of a prior segregated system continue to exist, the district court was correct in looking further. J.A. 211. However, the district court erred in looking at student assignment in isolation and ignoring the interrelatedness of the factors that contribute to segregation.

In *Keyes v. School District*, 413 U.S. 189, the Court held that a school board must show:

> that its policies and practices with respect to school-site location, school size, school renovations and additions, student attendance zones, student assignment and transfer options, mobile classroom units, transportation of students, assignment of faculty and staff, etc. *considered together* . . . were not factors in causing the existing condition of segregation in these schools.

Id. at 213-14 (emphasis added). The district court in this case did not even consider the possibility that the factors cited by this Court operated together.

The interconnectedness of the various facets articulated in *Green* is vividly illustrated by the concept of a racially identifiable school. A desegregated school system is one "without a 'white' school and a 'Negro' school, but just schools." 391 U.S. at 442. Schools are not black schools or white schools based solely on student assignment patterns. A school that is disproportionately black by student assignment may or may not be a "black school" within the meaning of *Green*. *Swann*, 402 U.S. at 26. It is also necessary to look at such factors as "the racial composition of teachers and staff, the

quality . . ." and community attitudes. *Id.* at 18; *Keyes*, 413 U.S. at 196. Those factors must be considered not just because they can make a school racially identifiable, but because in making a school racially identifiable, they have an impact on student assignment.

This Court has frequently held that the factors that lead to racially identifiable schools (the *Green* factors) are closely interconnected. In *Columbus Bd. of Ed. v. Penick*, 443 U.S. at 461, the Court approved the district court's finding that "assigning black teachers only to those schools with substantially black student populations" "'aggravated rather than alleviated' racial separation in the schools." Similarly, in *Dayton Bd. of Ed. v. Brinkman*, 443 U.S. 526, 536 (1979), the Court quoted the findings of the court of appeals that the district court had erred when it "ignored . . . the significance of purposeful segregation in faculty assignments in establishing the existence of a dual school system." This Court acknowledged "the relevance of segregated faculty assignments as one of the factors in proving the existence of a school system that is dual for teachers and students." *Id.* at 536 & n.9.

Just as "discriminatory student assignment policies can themselves manifest and breed other inequalities built into a dual system . . .", *Milliken v. Bradley*, 433 U.S. 267, 283 (1977), discriminatory faculty and staff assignment patterns and unequal allocation of resources can manifest and breed other inequalities contributing to perpetuation of a dual system. Indeed, factors such as faculty and staff segregation and unequal quality can not only affect student assignment patterns directly by signaling one school as black and thus encouraging white students to leave, but can do so indirectly because a school that is racially identifiable affects the racial composition of the neighborhood housing. *Keyes*, 413 U.S. at 202 (". . . the assignment of faculty and staff, on racially identifiable bases, has the clear effect of earmarking

schools according to their racial composition, and this, in turn, together with the elements of student assignment and school construction, may have a profound reciprocal effect on the racial composition of neighborhoods . . . thereby causing further racial concentration within the schools.")[15]. *See also United States v. Yonkers Bd. of Ed.*, 624 F.Supp. 1276, 1467 (S.D.N.Y. 1985), *aff'd*, 837 F.2d 1181, 1199-1201 (2d Cir. 1987), *cert. denied*, 486 U.S. 1055 (1988).

The interconnected nature of the *Green* factors is so evident that plaintiffs need not "prove with respect to each individual act of discrimination precisely what effect it has had on the current patterns of segregation." *Dayton*, 443 U.S. at 540. Plaintiffs seeking to establish liability need not "bear the burden of proving the elements of *de jure* segregation as to each and every school or each and every student within the school system." *Keyes*, 413 U.S. at 200. "[P]roof of state-imposed segregation in a substantial portion of the district will suffice to support a finding by the trial court of the existence of a dual system . . . a finding of intentionally segregative school board actions in a meaningful portion of a school system . . . creates a presumption that other segregated schooling within the system is not adventitious." *Id.* at 203, 208. Although the *Keyes* presumption was based on segregation in one geographic portion of the school district, the same rationale applies even more strongly to segregation in one facet of a school system. It defies

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[15] This Court has consistently refused to define the violation identified in *Brown* as separate pieces. In *Milliken v. Bradley*, 433 U.S. at 283, the Court declined to accept the argument that "since the constitutional violation . . . was the unlawful segregation of students on the basis of race, the court's decree must be limited to remedying unlawful pupil assignments." The violation was a segregated school system and the remedy could be as broad as necessary to cure the violation. *See also Bradley v. School Bd.*, 382 U.S. at 105; and *Rogers v. Paul*, 382 U.S. 198, 200 (1965).

common sense to suppose that a school district, like DCSS, that for 20 years has engaged in bad faith defiance of the district court's orders in some areas, has during that same time been acting in good faith to totally disestablish all vestiges of segregation in student assignment through all practical means.[16]

The *Keyes* holding that courts must consider the various facets of a school system together, the *Dayton* holding that plaintiffs need not distinguish the causal effects of each of the facets separately, the Court's various holdings that the facets are interconnected, and the *Keyes* presumption that the facets do operate in concert, all acknowledge that the various facets of a school system should ordinarily be viewed together because they act together. Respondents do not suggest that this is an irrebuttable presumption. *Keyes*, 413 U.S. at 203. For example, in *Pasadena City Bd. of Ed. v. Spangler*, 427 U.S. 424, 436 (1976), the Court said that the question of inadequate faculty hiring, as opposed to faculty assignment, may be viewed separately from student assignment. This is because faculty hiring plays a much less

[16] Social scientists have confirmed this Court's findings that the various facets of a school system are closely interrelated. U.S. Commission on Civil Rights, "Racial Isolation in the Public Schools," (GPO, Washington D.C.)(1967) at 67; Social Science Expert Statement attached to Resp.Br., *Columbus Bd. of Ed. v. Penick*, 7a-8a, 10a-11a ("[t]he racial composition of a school *and its staff* tends to stamp that identity on the surrounding neighborhood . . . ." (emphasis added). A number of studies of individual school districts have found that racial assignment of students "combined with segregative assignment of teachers, have combined to cause, enhance, and maintain the racial identifiability of schools and neighborhoods . . . ." Karl Taeuber, "Housing, Schools, and Incremental Segregative Effects," Annals of the American Academy of Political and Social Science 444:157, 164-65 (1979); Gary Orfield, *Must We Bus? Segregated Schools and National Policy* (Brookings, 1978), at 369, 322, 284 (Cleveland; Indianapolis; Ferndale, Michigan; Penn Hills, Pennsylvania; Wichita, Kansas). Indeed, it is the correlation among the factors that unmistakably marks a school as a black school or a white school.

significant role in racially identifying schools than faculty and staff assignment or allocation of resources. *See also Morgan v. Nucci*, 831 F.2d 313 (faculty hiring). However, in this case, the court never even inquired into the possible interconnectedness of the various facets, much less made a finding that DCSS had met its burden of showing that there were no connections.

Indeed, the only factual findings by the district court support the interconnectedness of the various facets in this case. The district court acknowledged that faculty assignment patterns have a critical effect on student assignment. J.A. 225 ("As long as schools have faculties that are identifiably of one race, it is unlikely that the schools will be able to successfully assimilate students of another race.") *See also* J.A. 232. It found that black faculty are not just segregated, they are segregated in schools that are black by student assignment and staff assignment. J.A. 234. Schools that are racially identifiable as black by all of these factors are those schools that receive the fewest resources; white schools that are racially identifiable as white by all these factors receive the most resources. Indeed, as the court of appeals noted, if there were not still black schools and white schools in DeKalb, it would not be possible "to distribute resources in a racially imbalanced fashion." Pet.App. 23a. Finally, the community perceives the black schools as inferior. J.A. 712; Tr. July 15, 1987, at 62.

The error of the district court was in failing to consider the interconnectedness of the various facets of DCSS's school system and to apply to that consideration the standards set by this Court. This error was similar to that identified in *Keyes*. Applying the *Keyes* holding to this case:

> Although the petitioners had already proved the existence of [vestiges in one part of the school system], this crucial finding was totally ignored when attention turned to [other

> parts]. Plainly, a finding of [vestiges] as to one portion of a school system is . . . highly relevant to the issue of the board's [vestiges] with respect to other [parts of] the system.

413 U.S. at 207. In effect, the district court turned the inquiry upside down and presumed that the *Green* factors were totally separate. The Court should not permit this method of analysis to stand.

First, if the various *Green* factors are seen as totally independent of each other, it is possible, and in this case certain, that the victims of a segregated system will never achieve a fully desegregated system. In *Brown v. Board of Education*, this Court held that school boards must "effectuate a transition to a racially nondiscriminatory *school system*," 349 U.S. at 299 (emphasis added). In *Green*, 391 U.S. 430, the Court repeated the duty created by *Brown*. The Court held that "*Brown II* was a call for the dismantling of well-entrenched dual *s*ystems . . . ." 391 U.S. at 437; *Raney v. Board of Education*, 391 U.S. at 449 (goal is a "desegregated, nonracially operated *system*"); *Wright v. Council of Emporia*, 407 U.S. 451, 463 (1972)("*Brown II* promised . . . a school *system* in which all vestiges of enforced racial segregation have been eliminated;" *Swann*, 402 U.S.at 22 ("The remedy commanded was to dismantle dual school *systems*"); *Keyes*, 413 U.S. at 213 (1973)(". . . School Board has the affirmative duty to desegregate the entire *system*"); *Milliken*, 433 U.S. at 282 ("The 'condition' offending the Constitution is Detroit's *de jure* segregated *school system*")(emphases added).

Even accepting the facts as DCSS portrays them, they desegregated student assignment for one year in 1969; they continued to segregate faculty assignment and staff assignment as student assignment "resegregate[d]," J.A. 210; they assigned fewer resources to the schools that are identifiably black by faculty and staff assignment; and now, 15 years later, when black and white students receive very separate and unequal education, they propose to desegregate faculty and staff assignment and equalize resources for one moment in time. In no way will it be possible to say that DCSS's black students have ever had the desegregated school system that the Constitution requires. *See Wright v. Council of Emporia*, 407 U.S. at 466 ("The message of this action, coming when it did, cannot have escaped the Negro children . . . .").

Second, if this Court allows the principle that school districts can desegregate on a piecemeal basis, without careful examination of the interaction of the various facets of the school system's operation, it is difficult to see what would prevent that principle from being extended. Indeed, DCSS in this case argued for a further extension of the principle it now seeks to establish in this Court. DCSS argued that it could have "incrementally" desegregated the faculty if each school at some time in its history had a desegregated faculty. J.A. 231 n.12. The district court rejected that argument as "ludicrous" by noting that it would permit compliance if only some schools were desegregated and others weren't. *Id.* Similarly, if DCSS's principles are accepted, school districts can be expected to seek to remove geographic sections of a district from court order after they are "desegregated" in violation of the logic behind the *Keyes* presumption or to remove certain grades as they are "desegregated." *See Dowell*, 111 S.Ct. 630. The DCSS proposal would introduce enormous uncertainty of this kind into this Court's previously clear holdings that it is the school system that must be desegregated.

Third, if student assignment is viewed totally in isolation from the other *Green* factors, the only way to measure compliance will be strict adherence to racial quotas. This Court has often held that "racial imbalance" in schools alone does not violate the Constitution. *Keyes*, 413 U.S. at 209; *Milliken*, 433 U.S. at 280 & n.14; *Swann*, 402 U.S. at 24. It is racially identifiable schools,

as measured by a constellation of factors including a history of discrimination, student assignment patterns, facility decisions including construction, siting and closing, faculty assignment, staff assignment, resource assignment and other factors that are the mark of a school system that has not desegregated. *Green*, 391 U.S. at 435; *Swann*, 402 U.S. at 18; *Dowell*, 111 S.Ct. at 638. However, if student assignment is separated from the other factors, the only way to measure whether there has been sufficient desegregation will be to look at racial balance.

The district court in this case failed to follow this Court's commands in *Keyes* and *Dayton* and other cases that it consider the impact of the various facets of the school system on each other in the context of a legal presumption, and common sense, that they are interconnected. The court did so even in the face of its own findings that the various facets of the DCSS school system were interconnected. That was legal error that profoundly infected its factual findings.

3. The District Court's Factual Finding Was Wrong Because It Failed To Apply The Legal Structure Required By This Court

Even if the court could look at student assignment in isolation without considering the school district's bad faith, nor the clear vestiges of segregation in other areas of the school system and their interrelationship with student assignment, the district court's finding that the current racial segregation in DCSS is not a vestige of prior segregation was wrong because it ignored the legal structure established by this Court to ensure that the court look carefully and closely to determine if vestiges remain.

> We have made it clear, however, that a connection between past segregative acts and present segregation may be present even when not apparent and that close examination is required before concluding that the connection does not exist. Intentional school segregation in the past may have been a factor in creating a natural environment for the growth of further segregation.

Keyes, 413 U.S. at 211.

As the court of appeals correctly found, "a previously segregated school system is under an 'affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch.'" J.A. 180, *quoting Columbus Bd. of Ed. v. Penick*, 443 U.S. at 459; and *Green*, 391 U.S. at 437-38. Pet.App. 3a, 12a. In order to assure that the required "close examination" is done and the segregation is eliminated "root and branch," this Court has set forth a structured legal analysis that the district court did not follow in this case.

First, the burden of proof is on the school district. DCSS asked the district court to hold that it had completed the process of fully desegregating the schools. In such a proceeding, the burden of proving that the desegregation process has been fully completed is on the school district. *Swann*, 402 U.S. at 26; *Keyes*, 413 U.S. at 210, 211 & n.17; J.A. 152. This Court has described this burden as a "heavy burden." *Wright v. Council of Emporia*, 407 U.S. at 467, *quoted in Dayton Bd. of Ed. v. Brinkman*, 443 U.S. at 538. This burden remains until "it is clear that state imposed segregation has been completely removed." *Green*, 391 U.S. at 439.

Some portions of the district court's opinion pay lip service to this principle, J.A. 204, 206, 237, but in its discussion of the evidence, the district court did not place the burden on the school district. Indeed, it appeared to place the burden on plaintiffs: "There is no evidence that the school system's previous unconstitutional conduct may have contributed to this segregation." J.A. 221-

22; "The court was presented with no evidence that these schools are a vestige of the dual system." J.A. 212.

Second, in a formerly segregated school system, there is a presumption that current segregation was caused by prior segregation.[17] "The systemwide nature of the violation furnished *prima facie* proof that current segregation . . . was caused at least in part by prior intentionally segregative acts." *Dayton Bd. of Ed. v. Brinkman*, 443 U.S. at 537, 540; *Swann*, 402 U.S. 26. Where there has been intentional segregation in the past, it is a "factor in creating a natural environment for the growth of further segregation." *Keyes*, 413 U.S. at 209, 211 & n.17;[18] ("plaintiffs in a school desegregation case are not required to prove 'cause' in the sense of 'nonattenuation'").

"[[I]n a system with a history of segregation . . . [there is also] a presumption against schools that are substantially disproportionate in their racial composition . . . [School authorities] have the burden of showing that such school assignments are genuinely nondiscriminatory." *Swann*, 402 U.S. at 26. In DeKalb, 50% of black students attend schools that are over 90% black. J.A. 208. A majority (59%) of white students attend schools that are disproportionately white; a majority of black students (62%) attend schools that are disproportionately black. J.A. 208. The presumption against those schools is applicable in this case and the burden was on the school district to justify those schools. As noted, the district court not only did not apply the *Swann* presumption, it viewed the cited statistics as irrelevant.

Third, effectiveness in achieving desegregation, not intent in continuing it, is the relevant standard. *Wright v. Council of Emporia*, 407 U.S. at 460-62; *Dayton*, 443 U.S. at 526-38 ("continuing duty to eliminate the effects of the system"); *Davis*, 402 U.S. at 35, 37("[t]he measure of any desegregation plan is its effectiveness."); *Green*, 391 U.S. at 434 (the court must assess "the effectiveness of a proposed plan in achieving desegregation."); J.A. 181, 205.[19] Again, the district court paid lip service to this principle, J.A. 206, but also required plaintiffs to demonstrate intentional discrimination after 1969. J.A. 205, 236-37.

Here, it is clear that DCSS never achieved effective desegregation. Even the district court, though it misapplied the law, balked at such a conclusion. The court held, in essence, that DCSS had been ineffective in desegregating even with respect to student assignment, but that it couldn't have been effective. "[T]he court agrees that the DCSS has become largely resegregated since the 1969-1970 school year . . . [but] has achieved maximum practicable desegregation as of the 1986-87 school year." J.A. 210, 223. This conclusion rests on faulty legal premises and cannot be sustained. A school district must "do more than abandon its prior discriminatory purpose." *Dayton*, 443 U.S. at 538.

It has an affirmative duty to desegregate. "Each instance of a failure or refusal to fulfill the affirmative

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[17] If this is true at the liability stage when plaintiff has the burden of proof, it must be true, *a fortiori*, when defendant is seeking relief from a court order requiring desegregation.

[18] Remoteness in time is irrelevant. In *Dayton*, 443 U.S. at 537, this Court expressly held that proof of intentional segregation in Dayton twenty-five years earlier properly shifted the burden of proof to school officials. *Keyes*, 413 U.S. at 210.

[19] *See also* Title VI, 42 U.S.C. §2000d; 34 C.F.R. §§100.3(b)(3), 100.3(b)(6)(i). J.A. 47. The district court judge in this case has persisted in requiring plaintiffs to prove intentional discrimination. J.A. 159 ("plaintiffs have failed to show any invidious discriminatory intent . . . ."); J.A. 166 ("[i]n reviewing this matter, the court must examine whether defendants' actions were unlawfully motivated . . . ."); *rev'd*, J.A. 174-82 ("[It] was error for the district court to hold that [school board action] could be enjoined only if it was motivated by discriminatory intent"). J.A. 181.

duty continues the violation of the Fourteenth Amendment." *Columbus Sch. Bd. v. Penick*, 443 U.S. at 459; J.A. 163.

In *Columbus*, this Court found fault with the Columbus Board of Education because it did nothing "to prevent the increase in segregation" caused by demographic change in the district. *Id.* at 463. At best, DCSS failed to act just as the Columbus board failed to act. Not only is such inaction insufficient as a remedy in a previously segregated system, it can be used to find intentional discrimination justifying a finding of liability. *Id.* at 465. "Adherence to a particular policy or practice 'with full knowledge of the predictable effects of such adherence upon racial imbalance in a school system is one factor among many others which may be considered by a court in determining whether an inference of segregative intent should be drawn.'" *Id.* (citation omitted).

The "particular policy or practice" to which the DeKalb schools adhered was neighborhood schools, which this Court has held is insufficient if it fails to achieve maximum feasible desegregation. *Swann*, 402 U.S. at 28; *Columbus*, 443 U.S. 449; *Keyes*, 413 U.S. 189. "In *Swann*, it should be recalled, an initial desegregation plan had been entered in 1965 and had been affirmed on appeal. But the case was reopened and in 1969 the school board was required to come forth with a more effective plan." *Columbus*, 443 U.S. at 459-60[20]

DCSS argues that it took 170 actions to change school attendance boundaries between 1969 and 1986 and all but eight had no effect on segregation or desegregation. J.A. 424, 590. There is considerable reason to doubt the accuracy of this analysis. DCSS's expert found no segregative effect in boundary changes that the district court explicitly and contemporaneously held did have a segregative effect. J.A. 91, 424. However, even crediting this evidence, it amounts to an admission by DCSS that, in violation of the 1969 order, it did not take draw attendance boundaries "so as to disestablish the dual school system." J.A. 64-65, 706 (school board member says "there's not been any discussion . . . of using attendance line changes as a means for providing for further desegregation"). *See also* J.A. 66, 236-37 (despite court order, portable classrooms not used to desegregate).

DCSS argues that there have been slight improvements in segregation since the mid-70's. However, their principal expert attributed any improvements exclusively to court ordered changes in the M to M program and demographics. He did not point to a single thing the school district did to affect the segregated schools. J.A. 580-82. Plaintiffs' expert concurred; DCSS did not do anything to minimize segregation. J.A. 794-95.

Finally, DCSS and the district court point to the M to M program and the magnet program. *See, e.g.*, J.A. 223. The magnet program involves only portions of some schools and fewer than 1% of all children Pet. App. 24a, n.16. The M to M program involves bussing 6% of the students, virtually all of whom are black, to white schools. J.A. 216-17, 253, 473-75. In *Green*, 115 black students (9%) were bussed to white schools and the court found that ineffective. 391 U.S. at 431, 441. It is difficult to understand why the district court was impressed with a lesser showing than this Court unanimously found unacceptable.[21]

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[20] The district court's insistence on taking the neighborhood school assignment system as an unalterable given led it to require plaintiffs to show that DCSS could have altered *housing* segregation. J.A. 222. That is, of course, not the proper inquiry. Instead, the question is whether DCSS carried its burden of showing that it achieved maximum *school* desegregation.

[21] The district court found that such transfer programs affect more (continued...)

In addition, the district court, over the years, found that DCSS was taking actions that had the effect of segregating the schools. It found that DCSS's M to M policies had segregative effects. J.A. 80, 92. It found in 1983 that DCSS was still impermissibly restricting the M to M program. J.A. 160-61. It found that shifts in school attendance boundaries had segregative effects. J.A. 89. It also found that less segregative alternatives were available, J.A. 89, a finding that this Court has used to find segregative intent in the context of liability. *Columbus*, 443 U.S. at 462-63 & nn.11, 12 (intent inferred "when alternatives were available which would have eliminated or lessened racial imbalance").

School construction in DeKalb had similarly segregative effects. This Court has condemned

> clos[ing] schools which appeared likely to become racially mixed . . . [and] building new schools in the areas of white suburban expansion farthest from Negro population centers in order to maintain the separation of the races with a minimum departure from the formal principles of 'neighborhood zoning.' Such a policy does more than simply influence the short-run composition of the student body. It may well promote segregated residential patterns which, when combined with 'neighborhood zoning,' further lock the school system into the mold of separation of the races.

Swann, 402 U.S at 21. *See also Dayton*, 443 U.S. at 540; *Columbus*, 443 U.S. at 460. That is precisely what DeKalb did. Schools were closed in the western and central parts of the district and opened on the eastern periphery of the district. Despite the court order requiring that school construction be done "with the objective or eradicating segregation and perpetuating desegregation," every one of the schools opened since 1969 is currently racially identifiable. *See* Statement of Facts, D, J.A. 66.

In short, the district court's failure to apply the proper legal standards and to examine closely the vestiges of segregation led it to conclude erroneously that no vestiges of segregation with respect to student assignment still existed in DCSS.

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[21] (...continued)
than the 6% who transfer. They affect white students at the receiving school as well and thus up to 19% of DeKalb's students were affected by the program. J.A. 219-20. By this method of analysis, 27% of the *Green* students benefitted from that program. This, of course, still leaves the black schools unaffected.

The district court also found that DCSS had not utilized all available techniques to desegregate, even in the area of student assignment. J.A. 222. Specifically, the district court held that there were at least three actions DCSS could have taken, but did not take, that would have furthered desegregation. First, DCSS could have established a magnet school program (as opposed to the few magnet classrooms it has). J.A. 224. ("Plaintiffs argue that further desegregation may be accomplished . . . . The court agrees . . . ."). The court found that magnet school programs were considered ineffective in the mid-70's, J.A. 219, but gives no explanation for DCSS's failure to adopt them as of 1986. Second, the court found that DCSS could have established a "grade reorganization plan" and that if it did so, it would have a desegregative effect. J.A. 224. The court did not even discuss DCSS's failure to use that technique prior to 1986. Third, the court found that DCSS could at any time have used bussing which would have had a desegregative effect, but excused its failure to do so only by saying it was "not considered a viable option" and that no party wanted it. J.A. 223. This Court has held that failure to consider this particular option is error. *See Davis v. Bd. of Sch. Comm.*, 402 U.S. 33, 38 (1971) (failure to give adequate consideration "to the possible use of bus transportation and split zoning" was error); *Swann*, 402 U.S. at 29-31. It was the court's failure to properly consider these alternatives in addition to other errors that led it to the perplexing conclusion that maximum practical desegregation had been achieved though more desegregation could be accomplished. J.A. 223-24.

4. The District Court's Failure To Follow The Proper Method Of Legal Analysis Led It To The Clearly Erroneous Factual Finding That Demographics Alone Caused The Current School Attendance Segregation

In addition to the errors already discussed, the district court's failure to follow the proper method of legal analysis led it to an important factual error. The segregation in DCSS schools today were not caused by the demographic changes in the school district.

Contrary to DCSS's suggestion, the district court did not find that DCSS was sufficiently desegregated even with respect to student assignment viewed in isolation in the years after the 1969 order.[22] The district court explicitly held that DCSS had not met its constitutional obligation to desegregate even with respect to the single factor of student assignment in the years after 1969. J.A.

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[22] The district court did find that DCSS was desegregated on student assignment in the single year of 1969. J.A. 210. That finding was tainted by the court's legal errors, was contrary to the law of the case, and was clearly erroneous.

The 1969 order recites the history of negotiations between the school board and HEW and says that those parties had developed "what was to be a final and 'terminal' plan of desegregation," Pet.App. 73a. The court did not describe its own order that way. The express limit on attendance zones restrictions to 1969, the changing standards for faculty assignment, prospective orders in such areas as future construction, annual reporting requirements, the retention of jurisdiction, as well as future actions by the district court and the court of appeals (*see, e.g.*, J.A. 71, 174) all belie DCSS's suggestion that this was a final order.

On its face, the 1969 order required prospective relief even with respect to student assignment, in 1969, to achieve the "objective of eradicating segregation." J.A. 66. Under DCSS's formulation, if they had been desegregated with respect to student assignment in 1969, the court would have had no jurisdiction to issue these orders and would not have done so.

If there were any doubt that the district court in 1969 impliedly held that DCSS was not fully desegregated, even with respect to student assignment in 1969, the district court explicitly so held a few years later. (continued...)

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[22] (...continued)
J.A. 82-83. DCSS made exactly the same argument then that it now makes in this Court -- that it had been desegregated with respect to student assignment in 1969 and that pursuant to *Spangler*, the court could order no further relief in that area. The court explicitly held that DCSS had not been desegregated in 1969 even with respect to student assignment:

> this court has never made any finding that defendants are operating a unitary system, and finds instead that the [student assignment] regulations . . . perpetuate[d] the vestiges of a dual system . . . [changes are necessary] to eliminate the vestiges of a dual system in DeKalb County . . . .

J.A. 82-84. That holding, which was not appealed, is the law of this case. *See also Armour v. Nix*, Civ. No. 16708 (N.D.Ga. Sept. 24, 1979), *summ. aff'd*, 448 U.S. 908 (1980)(one of DCSS's schools "was not desegregated" in 1969)(slip op. at 10); J.A. 203 n.1; Pet.App. 8a; J.A. 71-161; J.A. 176; J.A. 61-70, 82, 96, 98, 101, 104, 117, 127, 132, 138, 151, and 178-79. *See Spangler v. Pasadena City Bd. of Ed.*, 611 F.2d 1239, 1243 (9th Cir. 1979)(Kennedy, J., concurring); *Morgan*, 831 F.2d at 330.

In 1984, the district court did hold that DCSS had become desegregated in 1969. J.A. 162. That holding was explicitly reversed by the court of appeals. J.A. 178-80. DCSS did not file a petition for a writ of *certiorari* with this court. Thus, the law of this case as established by the court of appeals is that DCSS was not fully desegregated in 1969.

DCSS argues that in *Spangler* this Court held that one year of "desegregation" with respect to student assignment was sufficient to prohibit a district court from ordering further relief in the area of student assignment. The author of the *Spangler* opinion expressly rejected such an interpretation holding that *Spangler* meant only that the court could not readjust student attendance in perpetuity. *Vetterli v. United States District Court*, 435 U.S. 1304, 1308 (1978)(Rehnquist, J.)(in chambers).

DCSS also argues that closing the black schools was desegregative. It was, but not even the district court thought it was sufficient to comply with DCSS's constitutional obligations.

214.

A school district must not only achieve maximum feasible desegregation, it must maintain desegregation for at least some period. ("[o]ne swallow does not make a spring," J.A. 211, *quoting Lemon v. Bossier Parish School Bd.*, 444 F.2d 1400 (5th Cir. 1971)) The United States explicitly concedes this principle and DCSS does not appear to dispute it. J.A. 214. That agreement is unsurprising in light of this Court's explicit holdings that desegregation must be achieved and maintained. *Dowell*, 111 S.Ct. at 637 (compliance must be maintained for a "reasonable period of time"); *Raney v. Board of Education*, 391 U.S. at 449 ("the better course would be to retain jurisdiction until it is clear that disestablishment has been achieved"); *Dayton*, 443 U.S. at 538; *Columbus*, 443 U.S. at 460 (school board actions may not "perpetuate or reestablish the dual school system"); *Swann*, 402 U.S. at 21 ("it is the responsibility of local authorities and district courts to see to it that future school construction and abandonment are not used and do not serve to perpetuate or re-establish the dual system"); *Green*, 391 U.S. at 438 & n.4.

The courts of appeals have adopted a "three year" rule to measure whether desegregation has been maintained. *Youngblood v. Bd. of Ed.*, 448 F.2d 770 (5th Cir. 1971); *Quarles v. Oxford Mun. Separate Sch. Dist.*, 868 F.2d 750, 752 (5th Cir. 1989); *Ross v. Houston Indep. Sch. Dist.*, 699 F.2d 218, 227 (5th Cir. 1983); *Morgan*, 926 F.2d at 91; *Vaughns v. Bd. of Ed.*, 758 F.2d 983 (4th Cir. 1985). Thus, a school system must be desegregated for at least three successive years before it will be considered to have met its constitutional obligation to achieve and maintain desegregation. The United States endorses this three year rule and DCSS does not appear to contest it. *See* Brief for United States at 11, n.6.

Applying this principle, the district court in this case held even if DCSS was desegregated with respect to student assignment in 1969, "[t]here was insufficient evidence presented to this court from which it can make a determination, as defendants urge, that implementation of the 1969 order resulted in full eradication of the vestiges of the dual system that would entitle them to a declaration of unitary status on this issue [student assignment]." J.A. 214. *See also* Pet.App. 9a, *Pitts v. Freeman*, 755 F. 2d 1423 (11th Cir. 1985).

Thus, a fair reading of the district court's holding is that by 1975, the school district had not met the constitutional command to desegregate even with respect to student assignment. However, by 1975, the segregated student assignment system that now exists had been established through school board action and inaction. Most of the demographic change, on which the district court and DCSS place such emphasis, occurred after 1975. Indeed, the district court so held:

> Between 1975 and 1980, approximately 64,000 black citizens moved into southern DeKalb County . . . . Meanwhile, approximately 37,000 white residents moved from southern DeKalb County to surrounding counties . . . From the period of 1976-1986, at the elementary level, the DCSS experienced an enrollement (sic) decline of 15%, and within this change, an increase in black student enrollments of 86%. At the high school level, during the same period, DCSS experienced an enrollment decline of 16%, while the number of black students rose by 119%.

J.A. 215.

The percentage of black students attending majority black schools and the relative exposure index increased dramatically from 1969 to 1975 (from 35% to 73% and from 22.7 to 57.2) and then remained stable from 1975

to 1980 when the demographic change was at its greatest. J.A. 214-15, 253, 259, 260, 269-380. 73% of all school opening and closing occurred from 1969 to 1975. J.A. 269-380. The demographic change thus aggravated, but did not cause the segregation caused by DCSS's failure to follow the command of the Constitution. Statement of Facts, D and E.

The district court made this clearly erroneous finding precisely because it failed to apply the legal standards required by this Court, *see* sections I, II.A., II.B.1-3, *supra*, and because it failed to give the careful attention to the facts this Court has required. *Keyes*, 413 U.S. at 211.

Finally, even if demographics contributed to the vestiges of the current segregation, DCSS cannot escape responsibility. This Court always understood that demographics would change during the process of desegregation and that such change would not excuse a failure to desegregate.

> The failure of local authorities to meet their constitutional obligations aggravated the massive problems of converting from the state-enforced discrimination of racially separate school systems. This process has been rendered more difficult by changes since 1954 in the structure and patterns of communities, the growth of student population, movement of families, and other changes . . . .

Swann, 402 U.S. at 14.

School segregation affects as well as is affected by housing segregation. *Id.* at 20-21 ("[P]eople gravitate toward school facilities, just as schools are located in response to the needs of people. The location of schools may thus influence the patterns of residential development . . . ."); *see also Columbus* 443 U.S. at 465 & n.13.

For this reason, if a school district has not desegregated, it cannot avoid its constitutional obligations by pointing to housing segregation that mirrors the segregated pattern of educational services. *Dowell*, 111 S.Ct. at 638; *Davis v. East Baton Rouge Parish Sch. Bd.*, 721 F.2d 1425, 1435 (5th Cir. 1983); *Lee v. Macon Co. Bd. of Ed.*, 616 F.2d 805, 810 (5th Cir. 1980); *Vaughns v. Bd. of Ed.*, 758 F.2d 983, 988 (4th Cir. 1985); *Swann*, 402 U.S. at 20-21 (school segregation impacts residential segregation creating a "loaded game board" that the court must eliminate); *Columbus*, 443 U.S. at 459-61, 465 & n.13 (same); *Keyes*, 413 U.S. at 201-04 (same); *Kelley v. Metro. Co. Bd. of Ed.*, 687 F.2d 814.

DCSS simply has not fulfilled its constitutional obligation to desegregate even with respect to student assignment. The district court's conclusion that it need not do so, because no vestiges of segregation remain in student assignment, was so tainted by its misapplication of this Court's holdings that it was clearly erroneous.

CONCLUSION

Upon reviewing the record in this case, the court of appeals found that "DCSS . . . refuses to take affirmative action [to desegregate] and seeks to justify its inaction with frivolous and long rejected arguments." It then held:

> After twenty years of court supervision, the DCSS continues to operate racially identifiable schools. The DCSS has never achieved unitary status and it retains the duty to eliminate all vestiges of the dual school system.

Pet.App. 24a.

Respondents respectfully submit that the decision of the court of appeals is correct and should be affirmed.

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No. 89-1290

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

ROBERT R. FREEMAN, *et al.*,
Petitioners,

v.

WILLIE EUGENE PITTS, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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REPLY BRIEF OF PETITIONERS

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
ARGUMENT	2
CONCLUSION	19

TABLE OF AUTHORITIES

	Page
Anderson v. *City of Bessemer*, 470 U.S. 564 (1985)	13
Armour v. *Nix*, No. 16708 (N.D. Ga. Sept. 24, 1979), *aff'd mem.*, 448 U.S. 908 (1980)	13
Board of Educ. v. *Dowell*, 111 S. Ct. 630 (1991)	15, 17
Columbus Bd. of Educ. v. *Penick*, 433 U.S. 449 (1979)	13
Dayton Bd. of Educ. v. *Brinkman*, 443 U.S. 526 (1979)	14
Duignan v. *United States*, 274 U.S. 195 (1927)	3
Georgia State Conference of the NAACP v. *Georgia*, 775 F.2d 1403 (11th Cir. 1985)	14
Keyes v. *School Dist. No. 1*, 413 U.S. 189 (1973)	14
Miami Parts & Spring, Inc. v. *Champion Spark Plug Co.*, 402 F.2d 83 (5th Cir. 1968)	5
Milliken v. *Bradley*, 418 U.S. 717 (1974)	6
Partenweederei v. *Weigel*, 313 F.2d 423 (9th Cir. 1962), *cert. denied*, 373 U.S. 904 (1963)	3
Pasadena City Bd. of Educ. v. *Spangler*, 427 U.S. 424 (1976)	6, 15, 17
Ross v. *Houston Indep. School Dist.*, 699 F.2d 218 (5th Cir. 1983)	14
Singleton v. *Jackson Mun. Separate School Dist.*, 419 F.2d 1211 (5th Cir.), *vacated*, 396 U.S. 226 (1969), *rev'd.*, 396 U.S. 290 (1970)	*passim*
Swann v. *Charlotte-Mecklenberg Bd. of Educ.*, 402 U.S. 1 (1970)	5, 6
United States ex rel. Huisinga v. *Commanding Officer*, 446 F.2d 124 (8th Cir. 1971)	4
United States v. *Ortiz*, 422 U.S. 891 (1975)	3
RULES	
Fed. R. Civ. P. 52	13

REPLY BRIEF OF PETITIONERS

Respondents have abandoned the legal theory on which they prevailed in the court of appeals. They no longer dispute that petitioners are correct, as a matter of law, with respect to the first question presented in petitioners' brief, *viz.* whether the court of appeals erred in imposing an "affirmative duty" to remedy the segregative effects caused by massive demographic changes. Rather, having prevailed on a legal theory that they are now unwilling and unable to defend in this Court, respondents distort both the factual record and precedent in an effort to supply some justification for the court of appeals' order massively expanding the desegregation decree—notwithstanding petitioners' 22 years of compliance with the existing remedial plan.

This is *not* a case where petitioners are seeking immediate dissolution of a federal court decree. Instead, petitioners simply ask the Court to overturn the court of appeals' holding that petitioners are obligated to "eradicate segregation caused by demographic changes" (Pet. App. 20a), and thereby reinstate the judgment of the district court.[1]

[1] The district court found that the racial imbalance in student assignment that exists today is unrelated to any conduct of the DCSS either prior or subsequent to the entry of the 1969 decree. See Pet. Br. 14-15. The court therefore declined to mandate further relief in the area of student assignment. The court held, however, that it would not dismiss the case completely until the petitioners (1) had eliminated disparities in resources allocated to "types" of schools and (2) had "balanced" more fully the racial composition of faculty and administrators at schools throughout the system. See Pet. Br. 16-17 & n.19; see also pp. 11-12 nn.10-11, *infra*. By vacating the judgment of the court of appeals, which imposed a whole new set of remedial requirements, this Court would affirm the district court's decision to terminate the student assignment portion of the decree and permit that court to consider whether the petitioners' recent submissions now justify an order dissolving the decree in its entirety. See Brief of United States as *Amicus Curiae*, at 9-21 ("U.S. Br.").

ARGUMENT

The district court found that, with respect to student assignment, petitioners' compliance with the 1969 desegregation decree "effectively desegregated the DCSS for a period of time." J.A. 212. The court also found that, subsequent to the imposition of the decree, petitioners had done everything they reasonably could to maintain "maximum practical desegregation" in student assignment, despite the effects of massive demographic shifts in residential housing patterns. *Id.* at 220, 218-24. Thus, the district court concluded that, in the area of student assignment, the characteristics of the previous dual system "have been eradicated, or if they do exist, are not the result of past or present intentional segregative conduct by [petitioners] or their predecessors," and further relief therefore is unwarranted. *Id.* at 224.

The court of appeals reversed, but it did *not* reverse any of the district court's crucial factual findings. Instead, the panel held that further relief must be ordered until petitioners have fulfilled their "affirmative duty" to achieve and maintain simultaneous "racial balance" in all aspects of school operations for a minimum three-year period. Pet. App. 24a.

Respondents ignore the court of appeals' legal theory and seek to sustain the judgment by means of two new and alternative arguments. First, respondents directly attack the district court's finding that current racial imbalance is *not* attributable to (or, stated differently, is not a "vestige of") either the prior dual system or any failure by petitioners to comply with the decree. Resp. Br. 20, 27-30, 46-47; see *infra* pp. 2-13 (Section A). Second, respondents suggest that the district court's findings were somehow "tainted" by the incorrect application of legal principles. Resp. Br. 19, 30-46; see *infra* pp. 13-19 (Section B).

A. The core of respondents' "factual" argument is that current racial "imbalance" in student assignment is a "vestige" of the prior dual school system. Resp. Br. 45.

In fact, DCSS has been operated, pursuant to federal court order, in full compliance with a "student assignment system" that had been consistently endorsed by respondents throughout the last 22 years. It is only in this Court that respondents assert that the 22-year-old remedial decree has been inadequate.

1. Respondents' belated attack on the factual findings of the district court should be rejected because the question whether those findings were "clearly erroneous" was not pressed by respondents nor passed upon in the Eleventh Circuit and therefore should not be resolved by this Court. *United States* v. *Ortiz*, 422 U.S. 891, 898 (1975) (issue not raised in court of appeals is not properly before the Court); *Duignan* v. *United States*, 274 U.S. 195, 200 (1927) (court generally will not consider "questions not pressed or passed upon below").

Respondents, for strategic reasons, sought in both courts below to press for a broad legal ruling establishing an "affirmative duty" to maintain racial balance, regardless of the "cause" of any imbalance. See Brief for Plaintiffs/Appellants, at 15, 25-28. The factual findings that petitioners argued were central to the legal issue posed were irrelevant to respondents' analysis because, according to the legal theory they advocated in the Eleventh Circuit, petitioners were obligated to maintain a "school system in which maximum feasible desegregation has occurred, not simply a system in which all vestiges of the former dual system have been eliminated." *Id.* at 28; see *id.* at 15 ("[c]ontrary to established precedent, the district court examined the vestiges of the dual system, and held defendants responsible for correcting only those which defendants intentionally caused"). Having pursued the strategic choice of seeking a broad legal ruling, respondents should be estopped to pursue an alternative course that they disavowed in the court below—*i.e.*, claiming now that the district court's findings are "clearly erroneous." See, *e.g.*,

Partenweederei v. *Weigel*, 313 F.2d 423, 425 (9th Cir. 1962), *cert. denied*, 373 U.S. 904 (1963).[2]

2. Respondents also have conceded previously that the district court's findings were correct. For example, the district court noted:

> Plaintiffs concede that "the closing of the black schools in 1969 did, for a time, result in the desegregation of the schools of DeKalb County. . . ."

J.A. 210 (quoting Plaintiffs' Trial Brief, at 7); see J.A. 212 ("[P]laintiffs concede that" the 1969 order "effectively desegregated the DCSS for a period of time"). The district court also observed that respondents had conceded the central issue of the "causation" of subsequent racial imbalance in certain DCSS schools:

> Plaintiffs concede that the racial segregation in DeKalb County is the result of demographic shifts.

J.A. 210; see Brief for Plaintiffs/Appellants, at 25 ("[n]o one contends that defendants caused the population growth of DeKalb County, or that defendants could or should have exercised some control over the race or placement of the new residents"). Respondents' thirteenth-hour attack on the previously conceded factual findings of the district court should be rejected.[3]

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[2] Although petitioners obviously agree with the United States' analysis of the case, as set forth in its Brief *Amicus Curiae*, petitioners disagree with the United States' suggestion that "this Court should remand the case to the court of appeals with instructions that it review the[] [factual] findings [of the district court] under the clearly erroneous standard of Federal Rule of Civil Procedure 52(a)." U.S. Br. 21. Because the United States was not involved in the case before the Eleventh Circuit, the United States could not be expected to know, at the time it submitted its brief in this Court, that respondents intentionally had waived that argument in the Eleventh Circuit. In light of respondents' waiver, however, the course suggested by the United States would not constitute a proper disposition of this case. Rather, the judgment of the court of appeals should be vacated and the district court's more circumscribed judgment upheld. See *supra*, n.1.

[3] See *United States ex rel. Huisinga* v. *Commanding Officer*, 446 F.2d 124, 125-26 (8th Cir. 1971) (party precluded from challenging on appeal issue that had been conceded); see also *Miami Parts & Spring, Inc.* v. *Champion Spark Plug Co.*, 402 F.2d 83, 84 (5th Cir. 1968).

3. Even if this Court were to reach the "merits" of respondents' factual arguments, the district court's conclusion that demographic factors—not the conduct of petitioners—are the sole cause of racial imbalance in student assignment is amply supported by the record.

a. First, respondents argue that following the implementation of the 1969 decree "DCSS was not, in fact, desegregated . . . ." Resp. Br. 1. The undisputed fact is that the 1969 order mandated that all former *de jure* black schools be closed and all students be assigned to schools pursuant to the strict system of neighborhood attendance zones, established by the United States Department of Health, Education and Welfare ("HEW"). J.A. 64-65; see *infra* p. 6. This race-neutral method of student assignment has been faithfully adhered to since 1969. See Pet. Br. 30-32.

Respondents, however, complain that the 1969 decree was inadequate *ab initio* because it resulted in a greater than "permissible variance" in racial balance at some schools. Resp. Br. 3 & n.1. However, with two exceptions, none of the DCSS schools had majority black student populations following implementation of the 1969 order.[4] Given respondents' admission that some "variance" from the systemwide average of 5.6% black student population was permissible—perhaps "plus or minus

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[4] The fact that 2 out of 97 formerly white schools (Stoneview and Terry Mill Elementary Schools) had a greater than 50% black population in the years immediately after the entry of the decree does not demonstrate that the district court erred in holding that the *de jure* dual school system had been disestablished. This Court has held that, even in the early remedial stage, "the existence of some small number of one-race, or virtually one-race schools"—not just "majority" black, but all-black schools—"is not in and of itself the mark of a system that still practices segregation." *Swann* v. *Charlotte-Mecklenberg Bd. of Educ.*, 402 U.S. 1, 26 (1970); see Pet. Br. 5 n.6, 32-33; *cf.* U.S. Br. 10 n.5.

15%" (Resp. Br. 3 n.1)—statistical arguments demonstrating that a small percentage of schools had "twice as many black students as the systemwide average" (Resp. Br. 3) hardly constitute a significant, much less fatal, assault on the district court's factual finding that the DCSS "achieved racial parity in the area of student assignment on the day it closed the *de jure* black schools" in 1969. Pet. App. 20a.

Respondents, by focusing on "racial imbalance" as a statistical fact, overlook the controlling principle that the success of a desegregation decree cannot be measured by a statistical examination of "conditions" but requires careful inquiry into whether those conditions are the result of "present or past discriminatory action" on the part of the school system. See *Pasadena City Bd. of Educ.* v. *Spangler*, 427 U.S. 424, 434 (1976); *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 24, 26 (1970).[5] The proper test of the effectiveness of the 1969 student assignment remedy must focus not on the static picture of "conditions" but on whether the remedial order "restore[d] the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct." *Milliken* v. *Bradley*, 418 U.S. 717, 746-47 (1974). In this case, the violation—the maintenance of separate, overlapping "dual" school systems—was wholly cured by abolishing entirely the black school system. Pet. Br. 5.

Because black students in DCSS in 1969—the "victims of discriminatory conduct"—were a small percentage of the total student population and because black students were relatively dispersed geographically, HEW was able to construct a simple, logical system of neighborhood-based attendance zones that effectively integrated black

[5] One substantial difference between the parties' relative positions in the Eleventh Circuit was that respondents expressly rejected the need for an inquiry into causation in order to distinguish remediable "vestiges" from non-remediable "conditions." See Response of Plaintiffs/Appellants/Cross-Appellees, at 7 ("the words 'vestige,' 'characteristic' and 'condition' . . . were used interchangeably by [respondents] in the first brief").

students into the post-1969 school system. It was not necessary to undertake the arduous task of "upgrading" holdover black schools or constructing new schools, nor was there any need to engage in gerrymandering of attendance zones or massive transportation of students. See Pet. Br. 30. Instead, black students in the DCSS in 1969 immediately were admitted into the schools that they would have occupied in the absence of the "dual" school system, and DCSS "achieved racial parity" in student assignment. Pet. App. 20a. Thus, there was overwhelming evidence to support respondents' concession and the district court's finding that the 1969 remedial order was effective in remedying the effects of the prior dual system. *Id.*; see J.A. 209-21, 573-85.

b. Second, as an alternative factual argument, respondents assert that "massive demographic change" in DeKalb County did not occur until 1975 and that "the primary increase in racial segregation in DCSS schools occurred" prior to that time, thereby suggesting that DCSS—not demographic change—is responsible for "the amount of segregation in DCSS schools." Resp. Br. 4-5, 11. This argument relies on a manifestly incorrect characterization of DCSS' demographics; in fact, the black student population in the DCSS has increased at a rapid and *steady* rate since 1969. See J.A. 214-15, 155-58.[6]

As evidence of the conduct of petitioners that "perpetuated" segregation in the DCSS schools from 1969-75, respondents assert that petitioners' changes in elementary school boundary lines caused racial imbalance. Resp. Br. 10. In support of this position, respondents grossly distort the district court's 1976 opinion to suggest that

[6] In the period in which respondents downplay the rate of demographic change (1970-75), the percentage of black students in the overall DCSS student population more than doubled (from 6.44% to 17.34%). Def. Ex. 193. In the period in which respondents identify "massive" demographic change, the percentage of black students in the overall DCSS student population almost doubled again (from 17.34% to 32.26%). *Id.* See Brief for Plaintiffs/Appellants at 15 ("the demographic changes . . . began to take place in the county contemporaneously with the 1969 desegregation order").

boundary changes adopted by the DCSS had the "total effect" of ensuring

> that one predominantly white school, Cedar Grove, would remain predominantly white for a number of years . . . [It] perpetuat[ed] a dual system.

Resp. Br. 10 (quoting J.A. 89). Thus, respondents assert that "[it]"—*i.e.*, the petitioners' change in boundary lines—"perpetuated" the "dual system" and "expanded the amount of segregation in DCSS schools." Resp. Br. 10-11.

In fact, review of the district court's opinion—without respondents' misleading use of brackets and ellipses—leads to precisely the opposite conclusion:

> At the time these attendance zone changes were made, the Cedar Grove site had already been chosen, and the choice was made at a time when the racial composition of the area was almost completely white. As it developed, it was the location of this new school, accompanied by a transition in the residential patterns in the area, which had the effect of perpetuating a dual system, because the school site dictated to a large extent the placement of the new attendance lines. The propriety of the selection of the Cedar Grove site, however, is not in question.

J.A. 89. The court concluded that "because of the rapid residential transition occurring throughout this section of the county," it was "impossible to determine whether the zone changes" challenged by respondents "actually accelerated" or "had little effect on the process of desegregation which was in fact impeded by a natural process of residential transition." J.A. 92.[7] Thus, respondents' assertion that petitioners' school boundary decisions had a

[7] In rejecting respondents' request for attorneys' fees, the district court made clear that it had "declined to find that defendants were in violation of the 1969 order with regard to attendance zone changes, and ordered no changes in attendance lines." J.A. 113. Thus, the reason that "DCSS did not challenge these findings on appeal," see Brief of NAACP, *et al.*, as *Amici Curiae*, at 11 n.10 ("NAACP Br."), is that DCSS won.

segregative effect is based on a misleading "quotation" of the district court's opinion and is otherwise unsupported by the record. Resp. Br. 11.

4. Respondents' final "factual" attack suggests that even if the current lack of racial balance in student assignment is not *directly* attributable to the conduct of petitioners, their failure to achieve sufficient racial balance in faculty and administrative staff assignments and the assignment of "resources" to certain "types" of schools somehow "caused" the imbalance in student assignment. Resp. Br. 4, 7-8, 16-18, 27-34. This argument is flawed in several respects.

With respect to "imbalance" in faculty/staff assignment, the only *finding* of the district court was that petitioners had not achieved "compliance" with the so-called "*Singleton* requirement" (Pet. Br. 16) that the ratio of black faculty and staff in the individual schools be maintained at a level equivalent to the system-wide ratio. Pet. Br. 16 & n.15. The district court therefore held that petitioners would be required, *inter alia*, to achieve "*Singleton* compliance" (J.A. 249) before the "court w[ould] declare that the DCSS has obtained unitary status" in all respects. *Id.*[8]

Although respondents assert that there is "interconnectedness" between faculty/staff imbalance and student assignment (Resp. Br. 31), there are no factual findings —or citations to record evidence—that support such a causal link. Indeed, the suggestion that the minor statis-

[8] Respondents' assertion that this "imbalance" reflects a "failure to comply with" the 1969 order (Resp. Br. 21-22) is an outright misstatement of the record. Indeed, the district court held in 1976 that "defendants have more than complied" with the explicit faculty/staff assignment portion of the 1969 order. J.A. 84. The court did hold, however, that petitioners "have not taken adequate steps to utilize reassignment of teachers . . . *in accordance with the standard set out in*" the intervening Fifth Circuit decision in *Singleton*. J.A. 85 (emphasis added). Petitioners have now reported to the district court that they are in compliance with the *Singleton* requirement. Pet. Br. 17 n.19.

tical variations from system-wide racial balance in faculty/staff assignment at issue here would *cause* a change in housing patterns (which, in turn, would cause imbalance in student assignment, Resp. Br. 28) is ludicrous.[9]

With respect to the distribution of "resources," respondents condemn, in conclusory and excessive fashion, the supposed "inequality" of resources in DCSS schools as contributing to imbalance in student assignment. Resp. Br. 20 ("DCSS schools are both separate and unequal"); *id.* at 31 ("[s]chools that are racially identifiable as black . . . receive the fewest resources"); see NAACP Br. 25 n.32. However, the only basis for these assertions of "inequality" is a statistical analysis, prepared by respondents' expert, that purports to show that DCSS spends more "per pupil" in "white" schools (as identified by respondents, see Pet. Br. 16-17, n.17) than in "black" schools (as identified by respondents). See Resp. Br. 17.

This "statistical" disparity is in no way reflective of any invidious discrimination (past or present). To the contrary, it results from the fact that schools in the northern part of the county (with relatively smaller black student populations) had smaller overall student populations; conversely, schools in the southern part of the county had larger overall student populations because of the rapid residential growth in that area. See J.A. 214-15; Def. Ex. 193; Tr. Vol. V, pp. 209-10; Tr. Vol. VI,

[9] In all of the DCSS's schools in every year since 1976 (the year the "*Singleton* requirements" were imposed on DCSS), the record reflects only *two* instances where a DCSS school did not meet the annual "*Singleton* requirements" for faculty distribution, as ultimately defined by the district court and approved by the court of appeals (*i.e.*, a "permissible" variance of 15 percentage points from system-wide average). See Pl. Ex. 128; J.A. 550-551 (Gordon High School, with 72 teachers, out of compliance with "*Singleton* requirements" in 1977 and 1978 by a total of 7 teachers). Respondents cannot seriously contend that the replacement of 4 black teachers with 4 white teachers in 1977 and the replacement of 3 black teachers with 3 white teachers in 1978 in one school would have affected the course of student assignment throughout the entire school system.

pp. 152-54; Pet. Br. 33-34 n.27; see also J.A. 237 ("[t]he DCSS is constantly attempting to deal with the growing population of southern DeKalb County by building new schools and adding permanent additions to existing schools"). "Smaller" schools have the same *fixed* costs as large schools (*e.g.*, principals, band directors, maintenance staff and secretaries) and thus "smaller" schools will *statistically* reflect a larger cost-per-pupil. This statistical disparity has nothing to do with the average student's access to resources or quality of education in the DCSS and certainly does not constitute invidious discrimination.[10]

Indeed, the district court found that this statistical disparity in no way reflects actual educational opportunity or academic achievement. See J.A. 244, 247; Pet. Br. 16-17; see also J.A. 75 ("there is no apparent trend of superiority among any group of schools"). With respect to those concrete factors that *do* have a substantial impact on education, such as teacher-student ratio, there are more teachers per student in the schools that respondents identify as "black" than there are in the schools that respondents identify as "white." Tr. Vol. VIII, pp. 103-04; Tr. Vol. XI, pp. 70-71.[11] As the district court noted,

[10] The point can be demonstrated plainly by examples. Every school in DeKalb County has a single principal. If a principal in a 400 student school is paid $50,000 and a principal in a school of 1000 students is paid $50,000, then the per-pupil expenditure is $125 and $50, respectively. Although there would be a statistical disparity of $75 per pupil in this example, there obviously is no difference in the education the students receive in each school.

Nor is size the only explanation for this statistical disparity. For example, if the heating and air conditioning unit in an older school is less efficient (and the schools in the northern part of the county tend to be older), the annual electrical bill per pupil will be significantly higher than schools with newer, more efficient physical plants. But, if all students are educated in 72 degree classrooms, the students are being treated equally—despite the fact that DCSS allocates more dollars, on a per-pupil basis, to schools with older, less efficient physical plants.

[11] The NAACP's statement of "dismay" that petitioners provide "fewer teachers . . . to educate a greater number of black students"

the record demonstrates that, in a variety of contexts, black students in the DCSS have made greater educational advances than comparable black students nationally and comparable white students in the DCSS. J.A. 237-41; see Pet. Br. 16-17.

Finally, even *if* resource allocation was in some meaningful way "skewed" by race, respondents have not shown that such inequality of resources was causally linked, directly or indirectly, to racial imbalance in student assignment. Given the district court's factual finding that demographic factors—and *not* anything done by the DCSS—was the cause of racial imbalance in student assignment, respondents' argument that further relief in the area of student assignment is mandated by "inequality" in the distribution of faculty and resources must be rejected.[12]

(NAACP Br. 25) presumably is based on their counsel's unfamiliarity with the record.

[12] The arguments of respondents and their *amici* slight the very real difficulties petitioners face in operating this enormous school system in compliance with the district court's orders. For example, the respondents and their *amici* criticize the race-neutral policy of the School District that allows more senior school teachers to transfer to schools closer to their homes. This policy, however, has been integral to the School District's efforts to recruit and hire outstanding faculty, including black faculty. Because all teachers value the opportunity to transfer to schools near their homes, the policy helps the DCSS to retain successful teachers (who are in substantial demand), thereby allowing DCSS to provide an outstanding education to its students. See J.A. 248-49.

Of course, this transfer policy also has the effect of increasing the number of black teachers in schools in the southern part of the county and thereby creates "*Singleton*" problems. See *supra* p. 10 & n.9. If, however, the number of black teachers in some of the southern schools is reduced "too much," the DCSS faces complaints from black parents that their children are being deprived of an adequate number of role models. These kinds of practical problems reinforce the appropriateness of the Court's requirement of "good-faith compliance" with remedial orders—rather than the achievement of absolute racial balance advocated by respondents.

In sum, respondents' arguments in this Court attacking the district court's factual findings simply ignore the deference to which those findings are entitled. See *Anderson* v. *City of Bessemer*, 470 U.S. 564, 574 (1985); Fed. R. Civ. P. 52. The subtlety of the factual issues presented "counsels undiminished deference to the factual adjudications of the federal trial judges in cases such as these, uniquely situated as those judges are to appraise the societal forces at work in the communities where they sit." *Columbus Bd. of Educ.* v. *Penick*, 443 U.S. 449, 469-470 (1979) (Stewart, J., concurring); see *id.* at 457 n.6 (majority rejects "suggestion that this Court should play a special oversight role in reviewing the factual determinations of the lower courts in school desegregation cases").[13] In sum, respondents' factual arguments provide no basis for this Court to disturb the district court's findings of fact.

B. In addition to their attack on the factual findings of the district court, respondents raise a number of legal arguments that attack, at the margin, the district court's application of the controlling legal principles. See Pet. Br. 28-29. In doing so, respondents indirectly address the second question presented, *viz.* whether a school system must maintain "racial equality" in all six *Green* factors "*at the same time*" for "not less than three years" (Pet. App. 14a) before a remedial plan can be deemed successful with respect to any individual factor. See Pet. Br. 40-45; U.S. Br. 21-25; Resp. Br. 27-34.

1. Because of the "interconnectedness" of the various facets of school operations, respondents assert that the existence of remediable "vestiges" in any facet of school operations (in this case, faculty/staff and "resource" as-

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[13] Not only has District Judge O'Kelley been supervising this litigation for many years, but he heard all of the evidence on behalf of the three-judge court in *Armour* v. *Nix*, No. 16708 (N.D. Ga. Sept. 24, 1979); a case which sought inter-district relief in all of the public school systems in greater metropolitan Atlanta and which involved many of the same factual issues presented in this case. See Pet. Br. 11 n.11.

signment) mandates a "legal presumption" that existing racial imbalance in any other facet of school operations (in this case, student assignment) is automatically a "vestige" of the dual school system. Resp. Br. 30-31, 34. Respondents further assert that "in this case, the court never . . . made a finding that DCSS had met its burden of showing that there were no connections" between existing "imbalances" in student assignment and "imbalances" in other facets of school operations. *Id.* at 31. Therefore, respondents conclude that existing "racial imbalance" in student assignment within the DCSS must be deemed a "vestige" of *de jure* segregation. Resp. Br. 25.

This argument is fatally flawed because of respondents' failure to distinguish this case, which involves the *expansion* of the student assignment remedy in circumstances where petitioners have been operating under court order for the last two decades, from cases involving the imposition of a remedy upon an initial finding of liability. See Pet. Br. 28-29 & n.23. Respondents correctly note that cases such as *Keyes* v. *School Dist. No. 1*, 413 U.S. 189 (1973) and *Dayton Bd. of Educ.* v. *Brinkman*, 443 U.S. 526, 536 (1979), suggest that the *Green* factors are "interrelated" or "interconnected" in establishing *liability* for a "dual" school system. See *Keyes*, 413 U.S. at 214. Nothing in those cases, however, supports the use of a "presumption" of "interconnectedness" (Resp. Br. 27) to justify an *expansion* of the remedy in one area (student assignment) based on the failure of the remedial decree to achieve "unitary status" in another area.[14]

[14] Indeed, given the length of time that the DCSS has been operating under federal court supervision, it would be fanciful to "presume" that the DCSS's conduct during those years "caused" racial imbalance. For the past two decades, DCSS has not been in a position to take any steps to affect student assignment—other than to comply with the decree. See *Ross* v. *Houston Indep. School Dist.*, 699 F.2d 218, 226-27 (5th Cir. 1983) (declining to apply *Keyes* presumption that racial imbalance was attributable to school authorities, where that imbalance "evolved principally during the time [the school system was] under a desegregation order"); *Georgia State Conference of the NAACP* v. *Georgia*, 775 F.2d 1403, 1415-16 (11th Cir. 1985) (*Keyes* presumption not applicable where no students presently in schools had ever attended *de jure* segregated schools).

Respondents' assertion of such a "presumption" essentially is another way of imposing the requirement that a school district must *simultaneously remedy* all facets of school operations—without reference to whether the condition (*i.e.*, "imbalance" in student assignment) is in fact attributable to the prior "dual system." The law, however, is to the contrary. This Court in *Spangler*, 427 U.S. at 436, made clear that the Pasadena school system's failure "totally [to] achieve [] [a] unitary system" did not undermine the school system's ability to achieve unitary status with respect to student assignment. See *id.* at 434.[15]

Finally, even if the "presumption" suggested by respondents existed, the petitioners have met their burden of overcoming the presumption. The district court found that the degree of "racial imbalance" in student assignment was attributable *solely* to massive demographic changes in the county and not to the "vestiges" of the dual system—whether or not such vestiges were "related" to any other facet of the school system. See Pet. Br. 14-15; J.A. 224 ("the characteristics of the 1954 dual

[15] Respondents complain that the incremental approach urged by petitioners and the United States (U.S. Br. 21-25) and approved by this Court in *Spangler* will lead to a parade of horribles, such as efforts by school districts to "remove geographic sections of a district from court order after they are 'desegregated.'" Resp. Br. 33. Of course, *Spangler* approved an incremental approach with respect to each *Green* factor on a systemwide basis 15 years ago. Yet, respondents can point to no evidence of any school district seeking to expand upon that ruling, much less point to any adverse effect actually caused by *Spangler*'s incremental approach. On the other hand, respondents totally ignore the significant injury to principles of federalism occasioned by the approach they urge that prevents school districts from obtaining any relief from a remedial decree on an incremental basis. See Pet. Br. 46; *Board of Educ.* v. *Dowell*, 111 S. Ct. 630, 637 (1991).

system have been eradicated, or if they do exist are not the result of past or present intentional segregative conduct by [petitioners]"). The "find[ing] that [the DCSS's] actions achieved maximum practical desegregation" in student assignment (*Id.* at 221), coupled with the previous finding on vestiges, are a complete answer to respondents' conclusory assertion that DCSS had not met its "burden" of demonstrating that additional student assignment relief was unwarranted.

2. Respondents argue that the district court erred in imposing the burden of proof on them, when as a matter of law, petitioners had the burden of demonstrating that they were entitled to release from further supervision in the area of student assignment. Resp. Br. 34-41. This argument plainly is belied by the record and opinion below.

Petitioners have never contested their obligation to prove that they effectively remedied the effects of the *de jure* system with respect to all of the *Green* factors. Defendants' Reply to Plaintiffs' Post Trial Brief, at 1-2. The district court clearly accepted petitioners' voluntary assumption of the burden of proof. At the outset of its opinion, the court stated that the "school system must show that it is unitary before it can be dismissed from court supervision." J.A. 204. The district court also stated that it would "determine whether the defendants have met their burden of proof." *Id.* The court further noted that the "parties have requested" that the court review all "six pertinent areas" of school operations, identified in *Green*, as well as the overall "quality of education" in the DCSS, "when determining if these defendants have met their burden of proof regarding whether the DCSS is now a unitary system." *Id.* at 206. The court never deviated from this assignment of the burden of proof in its decision below.[16]

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[16] Respondents' reliance (Resp. Br. 35-36) on the district court's observation that there was an absence of countervailing evidence on certain points is misplaced. Review of the district court's opinion makes clear that those observations merely are part of the court's review of petitioners' evidence. See, *e.g.*, J.A. 212-13.

3. Respondents' final argument is that the existing lack of "racial balance" in faculty/staff assignment and "resource allocation" demonstrates, apparently as a matter of law, that "DCSS has not complied in good faith with the 1969 order to desegregate . . . ." Resp. Br. 21-23.

This argument reflects a failure, that is evident throughout respondents' brief, to distinguish "good-faith compliance" with a desegregation decree from (1) achievement of racial balance in a particular aspect of school operations, and (2) elimination of "vestiges" of discrimination in all aspects of school operations. With respect to the first point, however, this Court's decision in *Spangler* held that an imbalance "in the racial mix" of some schools provided no basis for ordering further relief—absent proof that the imbalance was "in any manner caused by segregative actions chargeable to the defendants." *Spangler*, 427 U.S. at 435. Thus, "racial imbalance" alone cannot be evidence of the sort of bad faith non-compliance sufficient to justify the continuation, or expansion, of a desegregation decree. See Pet. Br. 29; U.S. Br. 19-20; *Board of Educ.* v. *Dowell*, 111 S. Ct. 630, 638 (1991).

With respect to the second point, there is no basis to conclude that the "imbalances" in faculty/staff assignment and resource allocation that the district court identified are "vestiges" of the former dual school system. See Pet. Br. 33-34 & n.27. Despite respondents' unsupported assertions to the contrary (see Resp. Br. 25), the district court did not *find* that those imbalances were in any way linked to the operation of the *de jure* school system. Even if those imbalances were "vestiges," however, *Spangler* makes clear that the lack of success in "totally achiev[ing] the unitary system," 427 U.S. at 436 —*i.e.*, eliminating vestiges in all aspects of operations— does not necessarily reflect an absence of good faith. See *Spangler*, 427 U.S. at 435, 437-38 & n.5 (school district that had established "a system of determining admission

to the public schools on a nonracial basis" had fulfilled its obligation to remedy the "previously racially discriminatory [student] attendance patterns" even though the school district had not sucessfully implemented other requirements of the decree).[17]

In this case, the district court made no finding that petitioners *ever* had refused to comply in good faith with the court's desegregation orders; in fact, its findings are precisely to the contrary. See J.A. 203-04 (court rarely asked to intervene in implementing desegregation decree); J.A. 248 (noting DCSS' success and dedication to providing equal and quality education "for all students"); J.A. 110 (DCSS has "able and effective school board and school administration who . . . are trying to obey the law"). There is no basis for respondents' suggestion that the district court's requirement of additional, limited relief in two areas mandates the conclusion that petitioners have acted in bad faith in desegregating the schools throughout the district.

Moreover, for all of their efforts to portray petitioners as venal, respondents and their *amici* do not dispute that this case involves a strikingly small number of challenges to the actions of the school board during the two

[17] The analysis of *Spangler* by respondents and their *amici* truly is extraordinary. The NAACP claims (NAACP Br. 24) that reliance upon *Spangler* is misplaced because in that case "it was undisputed that the school board's initial implementation of a court-approved plan had attained the objective of a racially-neutral attendance pattern." In light of respondents' concession in both lower courts that the 1969 order effectively desegregated the DCSS in the area of student assignment and the district court's finding that their concession was warranted by the record, the NAACP's reasoning inadvertently (to be sure) demonstrates just how on point *Spangler* really is.

Respondents suggest that *Spangler* must be limited to the situation where the school board has failed to comply with its obligations in the area of faculty hiring—because hiring has much less to do with student assignment than faculty placement. But that is nonsense. There is nothing in the Court's analysis in *Spangler* that supports limiting the case in this way. See U.S. Br. 18-19.

decades that the desegregation decree has been in effect. See Pet. Br. 3-14 (describing history of proceedings involving interpretation and modification of desegregation decree since 1969). What is more, this case involves an even smaller number of instances where the school board engaged in even technical non-compliance with the dictates of the district court. In fact, none of the opinions of the district court—which are reproduced fully in the joint appendix (J.A. 61-253)—reflects even a hint of defiance or of bad-faith refusal to implement the court's orders. At worst, the disputes underlying those decisions reflect good-faith disagreements about how best to accomplish the remedial purposes of the decree and how to reconcile the terms of the decree with the legitimate educational goals of the school district when they occasionally collided with those purposes. Nothing in that record of compliance supports the court of appeals' attempt to impose new and concededly "bizarre" affirmative remedies in order to achieve perfect racial balance in student assignment.

CONCLUSION

For the foregoing reasons and those stated in petitioners' opening brief, the judgment of the court of appeals should be vacated.

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OCTOBER TERM, 1990

ROBERT R. FREEMAN, ET AL., PETITIONERS

v.

WILLIE EUGENE PITTS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONERS

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QUESTIONS PRESENTED

1. Whether a school board can be required to eliminate racial imbalances in student assignments within its schools that are caused by demographic shifts in residential patterns unrelated to a prior segregated school system.

2. Whether federal courts must continue indefinitely to supervise student assignments in formerly segregated schools—even though the existing student assignments are free from the vestiges of unlawful discrimination—solely because other aspects of the school system retain vestiges of unlawful discrimination.

TABLE OF CONTENTS

	Page
Interest of the United States	1
Statement	2
Introduction and summary of argument	7
Argument:	
I. The court of appeals erred when it determined that the school district had not fulfilled its constitutional obligations with respect to student assignments	9
A. This Court's decision in *Board of Education* v. *Dowell* establishes that school districts are entitled to release from a desegregation decree when they have complied with the decree for a reasonable period of time and eradicated as far as practicable the remnants of any unlawful discrimination	9
B. The court of appeals erred in determining that racial imbalances in the student assignments in this case were remnants of unlawful discrimination even though the district court found that the imbalances were not caused by the school district	16
II. A federal court may require no further action with respect to a facet of a school system once that facet is fully desegregated	21
Conclusion	25

TABLE OF AUTHORITIES

Cases:

Anderson v. *City of Bessemer City*, 470 U.S. 564 (1985)	21
Austin Independent School District v. *United States*, 429 U.S. 990 (1976)	14-15
Board of Education v. *Dowell*, 111 S. Ct. 630 (1991)	*passim*
Capital Cities Cable, Inc. v. *Crisp*, 467 U.S. 691 (1984)	21

Cases—Continued: Page

Columbus Board of Education v. *Penick*, 443 U.S. 449 (1979) 10, 12, 14, 15, 24
Dayton Board of Education v. *Brinkman*, 443 U.S. 526 (1979) 24
Flax v. *Potts*, 915 F.2d 155 (5th Cir. 1990) 23
G.D. Searle & Co. v. *Cohn*, 455 U.S. 404 (1982) 21
Green v. *County School Board*, 391 U.S. 430 (1968) 2, 4, 6, 10, 14, 15
Keyes v. *School District No. 1*, 413 U.S. 189 (1973) 15
Lee v. *Macon County Board of Education*, 616 F.2d 805 (5th Cir. 1980) 17
Milliken v. *Bradley*:
418 U.S. 717 (1974) 8, 12, 13, 14, 20
433 U.S. 267 (1977) 12, 16
Morgan v. *Nucci*, 831 F.2d 313 (1st Cir. 1987) 22, 23
Mount Healthy City Board of Education v. *Doyle*, 429 U.S. 274 (1974) 15
Oliver v. *Kalamazoo Board of Education*, 640 F.2d 782 (6th Cir. 1980) 24
Pasadena City Board of Education v. *Spangler*, 427 U.S. 424 (1976) 11, 13, 18, 19, 20, 23
Riddick v. *School Board*, 784 F.2d 521 (4th Cir.), cert. denied, 479 U.S. 938 (1986) 24
Rogers v. *Lodge*, 458 U.S. 613 (1982) 21
Ross v. *Houston Independent School District*, 699 F.2d 218 (5th Cir. 1983) 15
School Board v. *Baliles*, 829 F.2d 1308 (4th Cir. 1987) 16
Spangler v. *Pasadena City Board of Education*, 611 F.2d 1239 (9th Cir. 1979) 9
Swann v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971) 13, 14, 15, 19, 20
Village of Arlington Heights v. *Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977) 24
Washington v. *Davis*, 426 U.S. 229 (1976) 24
Wright v. *Council of the City of Emporia*, 407 U.S. 451 (1972) 12, 20
Wygant v. *Jackson Board of Education*, 476 U.S. 267 (1986) 16, 24

Cases—Continued: Page

Youngblood v. *Board of Public Instruction*, 448 F.2d 770 (5th Cir. 1971) 11

Constitution, statutes and rules:

U.S. Const. Amend. XIV (Equal Protection Clause) 2, 7, 8, 11, 12, 22, 24
Civil Rights Act of 1964, 42 U.S.C. 2000a *et seq.*:
Tit. IV, 42 U.S.C. 2000c *et seq.*:
42 U.S.C. 2000c(b) 20
42 U.S.C. 2000c-6 ..... 1, 20
42 U.S.C. 2000c-6(a) 20
Tit. VI, 42 U.S.C. 2000d *et seq.*:
42 U.S.C. 2000d 1
Tit. IX, 42 U.S.C. 2000h-2 *et seq.*:
42 U.S.C. 2000h-2 1
Equal Educational Opportunities Act of 1974, 20 U.S.C. 1701 *et seq.* 1-2
20 U.S.C. 1704 20
20 U.S.C. 1705 20
20 U.S.C. 1707 20
20 U.S.C. 1720(d) 20
20 U.S.C. 1751 20
Fed. R. Civ. P.:
Rule 52(a) 21
Rule 60(b)(5) 11

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INTEREST OF THE UNITED STATES

This case presents two important questions regarding judicial administration of school desegregation cases: (1) whether a school board can be required to eliminate racial imbalances in student assignments within its schools that are caused by demographic shifts unrelated to a prior segregated school system; and (2) whether federal courts must continue indefinitely to supervise student assignments in formerly segregated schools—even though the existing student assignments are free from the vestiges of unlawful discrimination—solely because other aspects of the school system retain vestiges of unlawful discrimination. The United States has responsibility for enforcing school desegregation under Titles IV, VI, and IX of the 1964 Civil Rights Act, 42 U.S.C. 2000c-6, 2000d, and 2000h-2, and the Equal Educational Opportunities Act

of 1974, 20 U.S.C. 1701 *et seq.*, and currently is involved in over 470 school desegregation cases, many of which would be affected by resolution of the issues presented by this case.

STATEMENT

1. Before the 1966-1967 school year, the DeKalb County School System (DCSS) in DeKalb County, Georgia, maintained dual attendance zones for blacks and whites. See Pet. App. 33a. In that school year, the DCSS replaced dual attendance zones with a system of geographic zones and a "freedom-of-choice" transfer plan. See *ibid.* Although some black students elected under the freedom-of-choice plan to attend schools that formerly had been legally restricted to whites only, most black students still attended the formerly black schools. See *id.* at 6a-7a, 33a, 74a.

In July 1968, black school children in DeKalb County and their parents instituted this class action, alleging that the schools in DeKalb County violated the Fourteenth Amendment because they were segregated on the basis of race. See Pet. App. 7a, 26a. Shortly after the action was filed, the DCSS, along with the federal Department of Health, Education and Welfare, voluntarily developed a plan to desegregate the County's schools. See *id.* at 26a. In June 1969, the district court approved the proposed plan, which enjoined the DCSS from discriminating on the basis of race; abolished the freedom-of-choice plan in light of *Green* v. *County School Board*, 391 U.S. 430 (1968); reassigned students to their neighborhood schools; and closed all six of the formerly de jure black schools. See Pet. App. 8a, 26a. Because the nonwhite population of DeKalb County at the time was quite small, all parties agree that "the closing of the black schools in 1969 did, for a time, result in the desegregation of the schools of DeKalb County," *id.* at 33a.

Around the time the plan initially was implemented, DeKalb County began to experience "phenomenal growth,"

Pet. App. 38a, and "rapid demographic changes," *id.* at 47a. In 1970, the County's population was approximately 350,000, and the DCSS served 74,741 students, of whom 5.6% were black students. See *id.* at 33a, 74a. By 1986, the County's population exceeded 450,000, see *id.* at 38a,[1] and black students constituted 47% of the 79,991 students enrolled in County schools, see *id.* at 3a-4a.

Dramatic shifts in residential patterns accompanied these demographic changes. In 1970, 7,615 non-whites lived in the northern part of DeKalb County; 11,508 non-whites lived in the southern part. See Pet. App. 38a. During the 1970s, southern DeKalb County's non-white population increased 661% to 87,583, primarily as a result of blacks moving in from nearby Atlanta. See *id.* at 6a-7a, 38a. At the same time, approximately 37,000 white residents moved from southern DeKalb County to neighboring counties. See *id.* at 7a, 38a. Meanwhile, in the northern portion of the County, "the number of whites grew tremendously," while the non-white population increased to only 15,365. *Id.* at 38a; see *id.* at 6a-7a. As a result, the northern portion of the County now is predominantly white and the southern portion is predominantly black. In light of the neighborhood school plan, these residential changes caused racial imbalances to develop in the student populations at the various schools.

In response to this shift in demographics, the DCSS in 1972 voluntarily implemented an M-to-M (majority-to-minority) transfer program. This program allows students who are members of a racial group that constitutes a majority in their neighborhood school to transfer to a school where their racial group is in the minority. See Pet. App. 39a. In addition, in the 1980s the DCSS instituted a magnet program in schools located in the center

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[1] "The district court and the parties agreed to use September, 1986, as a cut-off date for statistical information." Pet. App. 3a n.1.

of the County. See *id.* at 40a. Despite these efforts, by 1986 50% of the black students in the county attended schools that were more than 90% black, and 27% of the white students attended schools that were more than 90% white. See *id.* at 4a.

2. In January 1986—more than 16 years after the decree was imposed—the DCSS filed a motion in the district court, arguing that it had achieved unitary status and thus that the case should be dismissed. See Pet. App. 27a.[2] In July 1987, the court held a three-week trial to determine whether the DCSS had achieved unitary status. See *id.* at 9a. The court focused on the six "*Green* factors"—student assignment, faculty, staff, transportation, extracurricular activities, and facilities—that this Court outlined in *Green* v. *County School Board*, 391 U.S. 430, 439 (1968), as relevant in determining whether a school board has fulfilled its obligation to desegregate.[3] See Pet. App. 29a, 60a-71a. With respect

[2] For the most part, this case was inactive from the time of the original consent decree until 1975. See Pet. App. 8a, 26a n.1. From 1975 until January 1986, five motions were filed in the district court; three dealt exclusively with modifications to the M-to-M transfer program, and another successfully sought approval of a boundary line change proposed by the DCSS. In 1983, plaintiffs returned to the district court, contending that the expansion of a high school that had predominantly white students would have a segregative effect. Without holding a hearing, the district court found that the DCSS had achieved unitary status. It refused to bar the expansion of the high school, concluding that the DCSS had no discriminatory intent. See *ibid.* The court of appeals reversed, holding that it was improper to declare the DCSS unitary without a hearing, and that failure to consider the discriminatory effect resulting from expansion of the high school was error, without regard to the intent of the DCSS. *Pitts* v. *Freeman*, 755 F.2d 1423, 1427 (11th Cir. 1985). The January 1986 motion described in the text was filed promptly after the 1985 court of appeals decision.

[3] At the request of the parties, the district court also considered the "quality of education" when determining whether the DCSS had fully dismantled the dual school system. See Pet. App. 60a-71a. This appears to be an educational resource consideration closely related to the "facilities" factor described in *Green*.

to student assignments, the court found that "demographic shifts have * * * had an immense effect on the racial composition of the DeKalb County schools." *Id.* at 38a. The court stated that "[t]here is no evidence that the school system's previous unconstitutional conduct * * * contributed" either to the racial imbalance that now exists within the schools or to the "dramatic population shifts." *Id.* at 44a-45a. Indeed, the court found that "the same racial segregation would have occurred at approximately the same speed" regardless of any action by the DCSS, *id.* at 45a, and that the DCSS in fact "achieved maximum practical desegregation from 1969 to 1986," *id.* at 44a. Accordingly, as to student assignments, the court explained, the "DCSS has become a system in which the characteristics of the 1954 dual system have been eradicated, or if they do exist, are not the result of past or present intentional segregative conduct by defendants or their predecessors." *Id.* at 47a.

Based on these findings, the district court concluded that the DCSS had "fulfilled [its] constitutional obligations" Pet. App. 48a, and was "unitary" as to student assignments, *id.* at 71a. Accordingly, it refused to compel the DCSS to take further action to desegregate that aspect of operations. *Id.* at 48a, 71a-72a. The court also refused to order further relief in the areas of physical facilities, transportation, and extracurricular activities, because plaintiffs conceded that the DCSS had fulfilled its constitutional obligations in those areas as well. *Id.* at 59a. By contrast, the court found that vestiges of discrimination did remain with respect to faculty and staff assignments as well as per pupil expenditures. *Id.* at 55a-58a, 70a-72a. Thus, the court ordered further relief in those areas and explained that the DCSS "must comply with [its] dictates * * * before [it] * * * will declare that the DCSS has obtained unitary status." *Id.* at 72a.

3. The court of appeals reversed. Considering the *Green* factors, the Eleventh Circuit concluded that the district court erred in refusing to require the DCSS to eradicate racial imbalances caused by demographic changes. Pet. App. 19a. The court placed no significance on the district court's factual finding that "DeKalb County's demographic changes affected the DCSS," *id.* at 7a, but instead reasoned categorically that "[s]tudent segregation, prior to achieving unitary status, indicates that vestiges [of a dual] * * * system" still remain, *id.* at 20a. Accordingly, the court concluded that, because the DCSS had not removed all the vestiges of discrimination from its schools, it was required to remedy the student imbalances caused by demographic shifts. In the court of appeals' view, "[t]he DCSS may not shirk its constitutional duties by pointing to demographic shifts occurring prior to unitary status," but rather "must take affirmative steps to gain and maintain a desegregated student population" regardless of the cause of any existing disparities. *Id.* at 19a.[4]

The court of appeals also concluded that the DCSS cannot achieve unitary status unless and until it "maintains at least three years of racial equality in [the six *Green* categories]." Pet. App. 24a; see *id.* at 14a (stating that system must "fulfil[l] all six factors *at the same time*"). Thus, it reasoned that "a district court can order relief relating to *any* factor until a system achieves unitary status" with respect to all factors. *Id.* at 15a.

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[4] On appeal, neither party challenged the district court's rulings that the DCSS had fulfilled its constitutional obligations in the areas of transportation, extracurricular activities, and facilities. See Pet. App. 17a. The DCSS likewise did not challenge the district court's ruling as to its affirmative obligations in the areas of faculty, staff, and expenditures per pupil, but rather contended that it would achieve unitary status when it complied with that portion of the district court's order. See *id.* at 11a.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case demonstrates the need for this Court to elucidate the procedures district courts should follow in administering and terminating decrees in desegregation cases. The court of appeals held that a school district that had complied with a desegregation decree for more than 16 years, and that had removed all vestiges of a prior dual school system from its student assignments, could be required to take new affirmative steps—not described in the original decree—to eliminate racial imbalances in student assignments that arose during the pendency of the decree, even though the imbalances were caused by demographic changes, not the school district. This holding is inconsistent with the Equal Protection Clause and the decisions of this Court.

The first question presented in a case of this sort is whether the school district has achieved unitary status with respect to the area in question—in this case, student assignments. Under this Court's recent decision in *Board of Education* v. *Dowell*, 111 S. Ct. 630 (1991), a school district under court supervision attains unitary status when it satisfies a two-pronged test: first, it must comply in good faith with the desegregation decree for "a reasonable period of time," and second, it must eliminate "as far as practicable" the vestiges, or remnants, of unlawful discrimination. *Id.* at 637-638. In this case, the district court's findings—not reviewed by the court of appeals—suggest that this has been done with respect to student assignments, because the district court found that (i) the DCSS for more than 16 years complied in good faith with the desegregation decree; and (ii) the existing imbalances were not caused by any unlawful acts of the school district. If these findings are correct, the school district has satisfied its constitutional obligations with respect to student assignments.

The second issue is whether failure to remove the vestiges of discrimination from all facets of the school system (in this case, faculty and staff assignments and ex-

penditures per pupil) prevents the school district from being freed from continuing judicial supervision of a significant aspect (in this case, student assignments) with respect to which the school district *has* satisfied its constitutional obligations. This question should be resolved by use of a basic remedial principle fully applicable in this Court's desegregation cases: the remedy cannot go beyond the wrong. Once the school district has demonstrated that it has fulfilled all of its obligations with respect to an area such as student assignments—and thus has demonstrated that it has eliminated from that area as far as practicable any cognizable remnants of prior unlawful conduct—then the district court's remedial supervision in that area should cease. The fact that work remains to be done in other facets of the school district's operations does not demonstrate that subsequently-arising imbalances in student assignments can be linked to prior unlawful actions of the school district, and thus does not justify the heightened restrictions entailed by continued judicial supervision. Further actions of the school district in that area should be judged under the general principles of this Court's Fourteenth Amendment jurisprudence. See *Dowell*, 111 S. Ct. at 638.

The contrary approach taken by the court of appeals, on both issues, pointlessly would prolong judicial control of hundreds of school districts. That would be flatly inconsistent with this Court's injunction that "[n]o single tradition in public education is more deeply rooted than local control over the operation of schools; local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to quality of the educational process." *Milliken* v. *Bradley*, 418 U.S. 717, 741-742 (1974) (*Milliken I*).

Accordingly, the judgment of the court of appeals should be vacated, and the case should be remanded to the court of appeals with instructions that it review the district court's findings with respect to the cause of the racial imbalances within the schools. If the court of appeals does not find clear error in the district court's finding that the racial imbalances were caused by demographic shifts, rather than by unlawful actions of the school district, then it should release the school district from further supervision in the area of student assignments.

ARGUMENT

I. THE COURT OF APPEALS ERRED WHEN IT DETERMINED THAT THE SCHOOL DISTRICT HAD NOT FULFILLED ITS CONSTITUTIONAL OBLIGATIONS WITH RESPECT TO STUDENT ASSIGNMENTS

A. This Court's Decision In *Board of Education* v. *Dowell* Establishes that School Districts Are Entitled To Release from a Desegregation Decree When They Have Complied with the Decree for a Reasonable Period of Time and Eradicated as Far as Practicable the Remnants of Any Unlawful Discrimination

As this Court recognized earlier this Term in *Dowell*, decrees entered in desegregation cases "are not intended to operate in perpetuity." *Id.* at 637. Rather, "[f]rom the very first, federal supervision of local school systems was intended as a temporary measure to remedy past discrimination. * * * '[N]ecessary concern for the important values of local control of public school systems dictates that a federal court's regulatory control of such systems not extend beyond the time required to remedy the effects of past intentional discrimination.'" *Ibid.* (quoting *Spangler* v. *Pasadena City Board of Education*, 611 F.2d 1239, 1246 n.5 (9th Cir. 1979) (Kennedy, J., concurring)). Like *Dowell*, this case presents the general problem of determining the circumstances and procedures under which district courts should release school districts from desegregation decrees. In our view, this process should be guided by the answers to two questions articulated in

Dowell: first, "whether the [school board] ha[s] complied in good faith with the desegregation decree since it was entered," and second, "whether the vestiges of past discrimination ha[ve] been eliminated to the extent practicable." 111 S. Ct. at 638.

1. The first question is straightforward: Has the school district complied with the desegregation decree in good faith for a reasonable period of time. Because at the commencement of a desegregation case a "district court need not accept at face value the profession of a school board which has intentionally discriminated that it will cease to do so in the future," *Dowell*, 111 S. Ct. at 637, district courts at that time may assume supervisory responsibility over many facets of school district operations. On the other hand, changes in a school board's personnel with the passage of time as well as "a school board's compliance with previous court orders [are] obviously relevant" to the question of whether it is reasonable to expect the school board to slide back into discriminatory practices if the district court stops supervising the operations of the school board. *Id.* at 637-638.

Thus, if the school board commits no new acts of invidious discrimination,[5] and if it complies with the decree

[5] It is true that simple nondiscrimination is inadequate to satisfy a school district's obligation to remedy prior invidious discrimination. Whatever its efficacy in other contexts, compliance with an admonition to "go and sin no more" is insufficient here; the school district is "clearly charged with the affirmative duty * * * to convert to a unitary system," *Columbus Bd. of Education* v. *Penick*, 443 U.S. 449, 458-459 (1979) (quoting *Green* v. *County School Board*, 391 U.S. 430, 437-438 (1968)). In our view, though, when the federal courts have entered a comprehensive desegregation decree, that decree and the district's obligation during the pendency of the decree to take all practicable measures to remove the vestiges of any prior invidious discrimination define the scope of the local district's "affirmative duty" to desegregate its schools. For the same reasons that "a school board is entitled to a rather precise statement of its obligations under a desegregation decree," *Dowell*, 111 S. Ct. at 636, we do not believe that a school district that has complied in good faith with the orders of the federal courts, and has not otherwise violated the Equal Protection Clause, should be subject to additional affirmative duties defined only in the context of a determination whether the school district has become unitary.

In this regard, we believe that if the parties to a desegregation decree believe that changed conditions have made the decree ineffective to deal with the problems at which it was directed, they have the burden to move promptly to seek revision of the decree according to the usual procedures for modifying injunctions. After all, a desegregation plan is a final judgment; motions to modify it should be made promptly; and satisfactory implementation of a judgment normally should discharge a defendant from further obligations. See generally Fed. R. Civ. P. 60(b)(5).

for a reasonable period of time,[6] there is no continuing basis for assuming that the school board will act wrong-

[6] The question of what period of time is a "reasonable" period is—like other questions of "reasonableness" in the law—not susceptible of a categorical answer. The answer may vary from system to system, and decree to decree. For example, it may be that distinctions should be drawn between decrees that immediately provide comprehensive and complete remedies and those that "call for * * * 'step at a time' plans by definition incomplete at inception," *Pasadena City Board of Education* v. *Spangler*, 427 U.S. 424, 435 (1976); compliance with a comprehensive plan may lead to unitary status more swiftly than compliance with incomplete, developing plans. Similarly, willful violations of a plan by local officials may justify a district court's decision to maintain scrutiny for a longer period of time.

Nevertheless, to the extent guidelines can be provided—and we believe clear guidelines are desirable in this area, see generally Brief Amicus Curiae of the National School Boards Association in Support of the Petition for Writ of Certiorari—our experience supports the approach adopted by the Fifth Circuit in *Youngblood* v. *Board of Public Instruction*, 448 F.2d 770 (1971), suggesting that a three-year period generally is the minimum necessary to ensure the school district's rehabilitation. Cf. *Spangler*, 427 U.S. at 434-437 (suggesting, in a case where a district had complied with a decree for three to four years, that the school district had satisfied its obligations with respect to student assignments). At the other end of the spectrum, successful compliance for thirteen years should be adequate in all but the most unusual cases, because at that point no child, in kindergarten through twelfth grade, ever will have attended a school operated in a discriminatory manner; a school

fully. See *Columbus Board of Education* v. *Penick*, 443 U.S. 449, 472 (1979) (Stewart, J., concurring) ("The prejudices of school boards of 1954 * * * cannot realistically be assumed to haunt the school boards of today."). At this point, if the remnants of unlawful discrimination have been removed to the extent practicable (as discussed at pages 12-16, *infra*), the "strongly felt" need for "[d]irect control over decisions vitally affecting the education of * * * children," *Wright* v. *Council of the City of Emporia*, 407 U.S. 451, 469 (1972), mandates an end to continuing judicial supervision. Cf. *Milliken I*, 418 U.S. at 741-742 (describing the "deeply rooted" tradition of local control and automony as "essential * * * to quality of the educational process"); *Dowell*, 111 S. Ct. at 637 (citing *Milliken I*). Subsequent actions of the school board should be governed by the general principles of this Court's Equal Protection jurisprudence. See *Dowell*, 111 S. Ct. at 638.

2. Determining whether the district's actions have eliminated to the extent practicable all cognizable remnants of unlawful discrimination also should be a straightforward matter. This Court's cases offer two fundamental principles that should guide this inquiry.

First, this Court repeatedly has emphasized the importance of causation in placing an outer limit on the scope of a district court's authority. As this Court explained in *Milliken* v. *Bradley*, 433 U.S. 267 (1977) (*Milliken II*), a desegregation decree "must be designed as nearly as

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system that has complied with a federal court's decrees for an entire generation of students should be held unitary. On this point, we note that the Court earlier this Term in *Dowell* (where the district had complied with the decree for thirteen years—from 1972 until 1985—see 111 S. Ct. at 637), in framing the questions to be considered on remand, directed the district court to consider only whether the district had complied in good faith, not whether the period of compliance was sufficiently long, suggesting that thirteen years was a sufficent period of compliance in that case. See *id.* at 638. After such a period of compliance, lingering racial imbalances cannot be considered the proximate result of the district's prior violation. See also page 14, note 7, *infra*.

possible 'to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct.'" *Id.* at 280 (quoting *Milliken I*, 418 U.S. at 746). Accordingly, "federal-court decrees must directly address and relate to the constitutional violation itself. * * * [F]ederal-court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate the Constitution and does not flow from such a violation." 433 U.S. at 282; see *Dowell*, 111 S. Ct. at 637 (same); *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 15-16 (1971) (noting that the "task is to correct * * * the condition that offends the Constitution"); *Milliken I*, 418 U.S. at 757 (Stewart, J., concurring). Thus, it is not appropriate to require a school board under a desegregation decree to remedy disparities arising out of private decisionmaking, economics, demographics, or similar matters. See, *e.g.*, *Pasadena City Board of Education* v. *Spangler*, 427 U.S. 424, 436 (1976) (remedy should not respond to demographic shifts "not attributed to any segregative actions on the part of [the school board]"). The school board's affirmative obligation is only to cure the problems proximately resulting from the constitutional violation.

Second, because a school desegregation order has the limited objective of the "elimination of discrimination in the public schools," *Swann*, 402 U.S. at 22, the decree should focus on features that are "inherent in dual school systems," *ibid.*, and should not "embrace all the other problems of racial prejudice, even when those problems contribute to disproportionate racial concentrations in some schools," *id.* at 23. "The elimination of racial discrimination in public schools is a large task and one that should not be retarded by efforts to achieve broader purposes lying beyond the jurisdiction of school authorities. One vehicle can carry only a limited amount of baggage." *Id.* at 22.

"Vestiges," then, are best understood as "remnants": they must not only have been caused by the dual school

system, but themselves have been a part of the dual school system. Thus, federal courts readily should respond to such still-discriminatory features of formerly segregated school systems as inferior facilities for heavily minority schools, *e.g.*, *Swann*, 402 U.S. at 18-19; gerrymandered attendance and transportation zones, *e.g.*, *Penick*, 443 U.S. at 461-462 & nn. 8-10; maintenance of two high schools when a single high school readily could serve all students, *e.g.*, *Green*, 391 U.S. at 442 n.6 (describing with approval a proposal that would "eliminat[e] costly duplication * * * while at the same time achieving immediate dismantling of the dual system"); and separate teacher associations, student councils, or athletic leagues. On the other hand, desegregation decrees are not properly designed to alter features not inherent in the school system, such as uneven residential distribution [7] or disparities in income. Cf. *Austin Independent School District* v. *United*

[7] The intractable matter of uneven residential distribution is illustrative. As we have seen, a school board is responsible for correction only of the problems it has caused. But an inquiry in every desegregation case into the "unknown and perhaps unknowable factors" that cause residential imbalances, *Milliken I*, 418 U.S. at 756 n.2 (Stewart, J., concurring), promises the daunting, often unedifying, and—for many school districts—prohibitively expensive spectacle of a parade of social science experts. Although existing residential disparities should be taken into account "in fashioning a remedy" at the outset of a case to desegregate the school system, see *Swann*, 402 U.S. at 21, once a school district has complied with a decree and removed physical differences among the schools, the passage of time makes it more and more doubtful that the continuing residential imbalances properly are attributable to prior invidious discrimination by the school board. Long-term persistence of such imbalances surely must rest in large part on other factors, such as socioeconomic status, preferences for living in a particular community or near a particular employer or church, or even aversion to the inconvenience of moving. See *Penick*, 443 U.S. at 480-481 (Powell, J., dissenting) (noting that segregated housing patterns are found throughout the country, "caused by social, economic, and demographic forces for which no school board is responsible"); *id.* at 512 (Rehnquist, J., dissenting).

We suggest that by the time a school district fairly has removed all aspects of the dual school system, the persistence of these im-

States, 429 U.S. 990, 994-995 (1976) (Powell, J., concurring) (criticizing portions of a desegregation decree that attempted to remedy residential segregation). *Swann* explained that efforts to remedy such wide-ranging problems in the context of a desegregation case would detract from the core purpose at hand—removal of the dual school system. Thus, in the lower courts the focus has been, quite properly, on the *Green* factors alone, which deal strictly with aspects of the school system itself.[8] See, *e.g.*, *Ross* v. *Houston Independent School District*, 699 F.2d 218, 225-228 (5th Cir. 1983). See also *Dowell*, 111 S. Ct.

balances in other areas of society—whatever their initial cause—must be considered, as a matter of law, "too attenuated to be a vestige of former school segregation," *Dowell*, 111 S. Ct. at 638 n.2; see *Keyes* v. *School District No. 1*, 413 U.S. 189, 211 (1973) ("at some point in time the relationship between past segregative acts and present segregation may become so attenuated as to be incapable of supporting a finding of de jure segregation warranting judicial intervention"); cf. *Mount Healthy City Board of Education* v. *Doyle*, 429 U.S. 274, 287 (1974) (under the First and Fourteenth Amendments, employer is not liable for wrongful termination if factors other than exercise of protected rights would have caused termination even in the absence of illegitimate factors).

[8] In *Green* v. *County School Board*, 391 U.S. 430 (1968), the Court set forth six facets of school operations—student assignment, faculty, staff, transportation, extracurricular activities, and facilities—that bear on the question of whether school officials are operating a dual school system. *Id.* at 435. Since *Green*, the Court repeatedly has emphasized the importance of these factors. See, *e.g.*, *Swann*, 402 U.S. at 18 (stating that "existing policy and practice with regard to faculty, staff, transportation, extracurricular activities, and facilities" are "among the most important indicia of a segregated system"); *Keyes* v. *School District No. 1*, 413 U.S. 189, 196 (1973) (focusing on the *Green* factors and noting that "[i]n addition to the racial and ethnic composition of a school's student body, other factors, such as the racial and ethnic composition of faculty and staff and the community and administration attitudes toward the school, must be taken into consideration"); *Dowell*, 111 S. Ct. at 638.

at 638 (noting that the school board need remove vestiges of discrimination only "to the extent practicable").[9]

B. The Court of Appeals Erred in Determining that Racial Imbalances in the Student Assignments in This Case Were Remnants of Unlawful Discrimination Even Though the District Court Found that the Imbalances Were Not Caused by the School District

Application of the principles discussed above demonstrates that the court of appeals erred in rejecting the district court's conclusion that the DCSS had satisfied its constitutional obligations with respect to student assign-

[9] Strong practical reasons bolster *Swann*'s teaching that a school desegregation case is not a proper vehicle for addressing social problems outside the context of the school system, even if an expert witness can devise a theory under which the problems partially are attributable to prior invidious discrimination. For example, it can be argued that because the segregated system afforded inferior educational opportunities for prior generations of minority students, the descendants of those students also have been impeded, for socioeconomic reasons, from reaching their full academic potential. Although it certainly may be permissible to institute programs to deal with such problems in the first instance, *Milliken II*, 433 U.S. at 283-288, to maintain jurisdiction until such amorphous effects are eliminated is to guarantee that federal court supervision will operate virtually in perpetuity. Contra *Dowell*, 111 S. Ct. at 637 (desegregation decrees are "not intended to operate in perpetuity"). See *School Board* v. *Baliles*, 829 F.2d 1308, 1312-1314 (4th Cir. 1987) (declining to consider, in unitariness consideration, the claim that segregated system had exacerbated minority poverty, which in turn led to continued "educational deprivation" for blacks: "Educational deficiencies that result from problems such as poverty are best remedied by programs directed toward eliminating poverty, not by indirect solutions through school programs"). Federal court supervision of a school district on the basis of all disparities that are traceable in part to the previously segregated educational system will lead to "remedies that are ageless in their reach into the past, and timeless in their ability to affect the future." *Wygant* v. *Jackson Board of Education*, 476 U.S. 267, 276 (1986) (plurality opinion of Powell, J.).

ments. The district court found that the DCSS had complied with the decree for more than 16 years—from June 1969 to January 1986—before seeking a declaration of unitary status. Pet. App. 26a-27a. It also found that the plaintiffs had conceded that the plan imposed by the decree "did, for a time, result in the desegregation of the schools of DeKalb County." *Id.* at 33a. Finally, the district court concluded that demographic shifts unrelated to prior invidious discrimination caused the racial imbalances now existing in the DeKalb schools. *Id.* at 44a-45a. In fact, the district court concluded that the demographic shifts had such overwhelming force that "the same racial segregation would have occurred at approximately the same speed" in spite of any further action by the DCSS. *Id.* at 45.

The court of appeals, however, considered these findings irrelevant. Not only did it not agree with the district court's conclusion that the DCSS had fulfilled all of its obligations with respect to student assignments—and thus was entitled to be freed from continuing judicial supervision in that area—it ordered the district court to impose new and additional remedial obligations on the DCSS. Rejecting the district court's focus on the actual cause of the existing imbalances, it concluded that the DCSS was required to take whatever steps were necessary to alleviate the racial imbalances in student assignments. Its conclusion seems to rest on two related premises: first, that "demographic changes [cannot] constitute legal cause for racial imbalance in the schools" while a desegregation decree is pending, Pet. App. 20a (quoting *Lee* v. *Macon County Board of Education*, 616 F.2d 805, 810 (5th Cir. 1980)); and second, that the federal remedial power reaches any imbalance (whether in student assignments or elsewhere) that arises during the pendency of a court order to desegregate, without regard to whether that particular imbalance was caused by prior invidious discrimination, Pet. App. 14a-15a, 19a-20a. Both of these premises are incorrect.

The flawed nature of the first premise is demonstrated by a brief review of this Court's decision in *Spangler*, which held that a school board that is complying with a valid court-ordered desegregation plan cannot be required to alter attendance zones in response to demographic shifts unrelated to any of its past segregative actions.

In 1970 a federal district court ordered the Pasadena school board to adopt a desegregation plan requiring that no school have a majority of minority students. See *Spangler*, 427 U.S. at 427-428. During its first year of implementation, the school board complied with the court's plan in all respects. See *id.* at 431. In 1971, however, residential patterns began to shift. See *id.* at 431, 435. By 1974, five of Pasadena's thirty-two schools had a minority enrollment that exceeded fifty percent. See *id.* at 435. Accordingly, the school board asked the district court to relieve it of the requirement that no school have a majority of minority students. The record indicated that "[t]here was * * * no showing that [the] post-1971 changes in the racial mix of some Pasadena schools * * * were in any manner caused by [the school board's] segregative actions." *Ibid.* The district court, "apparently believ[ing] it had authority to impose [the no-majority] requirement even though subsequent changes in the racial mix in the Pasadena schools might [have] be[en] caused by factors for which the [school board] could not be considered responsible," refused to modify its order. *Id.* at 434.[10]

After a divided panel of the Ninth Circuit affirmed, this Court reversed, holding that the district court "exceeded its authority" by continuing to impose a requirement of racial balance without a showing that the school board was responsible for intervening changes in the racial composition of the schools. 427 U.S. at 435. This

[10] The district court explained that, in its mind, the 1970 order "meant to me that at least during my lifetime there would be no majority of any minority in any school in Pasadena." *Spangler*, 427 U.S. at 433.

Court stated that the "limits beyond which a court may not go in seeking to dismantle a dual school system are * * * tied to the necessity of establishing that school authorities have in some manner caused unconstitutional segregation." *Id.* at 434. Quoting *Swann*, 402 U.S. at 31-32, this Court further explained:

> It does not follow that communities served by [unitary] systems will remain demographically stable, for in a growing, mobile society, few will do so. Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system.

427 U.S. at 436 (bracketed insertion by *Spangler* Court). Thus, because the Pasadena school board had implemented "a plan designed to obtain racial neutrality in the attendance of students at Pasadena's public schools" and any racial imbalance that existed was "not attribut[able] to any segregative actions on the part of [the school board]," the school board could not be required to respond to the changes in attendance patterns. *Ibid.* This Court concluded its analysis by stating that the district court, "having once implemented a racially neutral attendance pattern in order to remedy the perceived constitutional violations on the part of the defendants, * * * had fully performed its function of providing the appropriate remedy for previous racially discriminatory attendance patterns." *Id.* at 436-437. This reasoning flatly contradicts the conclusion of the court of appeals in this case that school boards must remedy attendance imbalances attributable to demographic shifts that the school board has not caused whenever those imbalances arise during the pendency of a desegregation decree.

Nor is there any support for the court of appeals' second premise, that any imbalance arising in the school system while vestiges of discrimination still remain in

other facets of the school district's operations is itself a vestige that must be cured, for this is tantamount to a holding that the districts must remove *all* racial imbalances, without regard to cause. Such a holding would contradict this Court's conclusion that "desegregation * * * does not require any particular racial balance," *Milliken I*, 418 U.S. at 740-741. As this Court explained in *Swann*, the "constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole," 402 U.S. at 24, nor does "the existence of some small number of one-race * * * schools within a district * * * in and of itself" indicate unlawful discrimination, *id.* at 26; see also *Spangler*, 427 U.S. at 438; *Wright*, 407 U.S. at 464 (1972).[11] In sum, racial imbalance cannot be a cognizable vestige of discrimination if the imbalance results from causes external to the school board and its actions, as the district court found to be the case here.

Because of its erroneous view that a school board must eliminate all racial imbalances within the schools regardless of their cause, the court of appeals did not consider the correctness of the district court's factual findings (Pet. App. 44a-45a) that the racial imbalances that now exist

[11] Congress similarly has defined "desegregation" in terms of sorting by race, and rejected any definition hinging on racial balance. See 42 U.S.C. 2000c(b) (" 'Desegregation' means the assignment of students to public schools and within such schools without regard to their race, color, religion, sex or national origin, but 'desegregation' shall not mean the assignment of students to public schools in order to overcome racial imbalance"); see also 42 U.S.C. 2000c-6(a); 20 U.S.C. 1704, 1705, 1707, 1720(d), 1751. Although the Court concluded in *Swann* that 42 U.S.C. 2000c(b) and 2000c-6 were not intended to limit the "historical equitable remedial powers" of the federal courts, it also indicated that these statutes were intended not to create a cause of action "where racial imbalance exists in the schools *but with no showing that this was brought about by discriminatory action of state authorities.*" 402 U.S. at 17-18 (emphasis added). The latter situation is precisely what is at issue here.

in student assignments did not result from any invidious discrimination by the DCSS. Accordingly, this Court should remand the case to the court of appeals with instructions that it review these findings under the clearly erroneous standard of Federal Rule of Civil Procedure 52(a). See *Anderson* v. *City of Bessemer City*, 470 U.S. 564, 573-576 (1985); *Rogers* v. *Lodge*, 458 U.S. 613, 622-623 (1982).[12]

If the court of appeals concludes on remand that the district court correctly found that the racial imbalance that currently exists in the DeKalb schools is not attributable to any of the actions of the DCSS, then it should not order the DCSS to take further action to eliminate the imbalance. If, on the other hand, the court of appeals finds that unlawful actions of the DCSS caused the racial imbalance, it may order the DCSS to eliminate that portion of the imbalance in student assignment that its unconstitutional actions have caused.

II. A FEDERAL COURT MAY REQUIRE NO FURTHER ACTION WITH RESPECT TO A FACET OF A SCHOOL SYSTEM ONCE THAT FACET IS FULLY DESEGREGATED

As we have explained above, if the court of appeals affirms the finding of the district court as to the cause of the racial imbalance within the DeKalb schools, it should remove the new remedial obligations imposed by the decision at hand. It then would need to decide whether that finding—that the DCSS successfully has satisfied its constitutional obligations with respect to student assignments—also requires a termination of judicial supervision of student assignments in the DCSS schools. In the course

[12] The undisputed and massive demographic shifts and the conceded initial success of the desegregation plan provide, in our view, ample support for the district court's findings. But their propriety need not be considered by this Court in the first instance. See *Capital Cities Cable, Inc.* v. *Crisp*, 467 U.S. 691, 697 (1984); *G.D. Searle & Co.* v. *Cohn*, 455 U.S. 404, 414 (1982).

of its reasoning justifying imposition of the new remedies, the court of appeals concluded that the federal courts should maintain jurisdiction and supervisory control of *all* aspects of the local schools until the school board successfully has satisfied its constitutional obligations in all facets of the schools.

This issue frequently has been debated in terms of whether "unitariness" may be achieved incrementally. See Pet. 11, 13-14; Pet. App. 15a-16a; *Morgan* v. *Nucci*, 831 F.2d 313 (1st Cir. 1987) (holding that a school district can become unitary in increments). We generally agree with the concept of incremental unitariness reflected in *Morgan*'s holding that it may be appropriate to release a school district from federal supervision of student assignments before releasing it from supervision over other facets of the school system that continue to contain remnants of invidious discrimination, but we doubt that the phrase itself sheds much light on the analysis a court should apply in these cases. As this Court noted in *Dowell*, the word "unitary" is found nowhere in the Constitution. 111 S. Ct. at 636. Moreover, a focus on formal rites of passage to some magical "unitary status" diverts attention from the basic propositions outlined above regarding the scope of a federal court's remedial authority in a school desegregation case.

We believe the issue is better approached in terms of whether there remains a basis for continued judicial displacement of local authority with respect to a particular facet of school operations. As we discussed at page 10, *supra*, the initial basis for the court's supervision of the school district's operations is the commonsense notion that at the commencement of a case involving de jure segregation of the schools, courts need not credit a school board's self-serving affirmations that it will change its ways and comply with the dictates of the Equal Protection Clause. But after a school board has removed all vestiges of discrimination from a particular area to the extent practicable and has complied with the court's orders for

a time period sufficient to satisfy its constitutional obligations in the area in question, there no longer is an adequate reason for the court's continued prophylactic supervision of the school district's operations in that area.

Spangler reinforces this conclusion. There, this Court refused to allow a district court to require the Pasadena school board to take further action with regard to student assignments, even though it was possible that the school board had "not yet totally" dismantled the vestiges of the dual system in the other aspects of school operations. 427 U.S. at 436, 438 n.5; see also *id.* at 442 (Marshall, J., dissenting). As this Court explained, the existence of a "dispute as to [the school board's] compliance with those portions of the plan specifying procedures for hiring and promoting teachers and administrators * * * does not undercut the force of the principle [that] * * * the [d]istrict [c]ourt was not entitled to require the [school board] to rearrange its attendance zones each year so as to ensure [a certain] racial mix" of students. *Id.* at 436. Having "once implemented a racially neutral attendance pattern" that "accomplished that objective," the court had "fully performed its function of providing the appropriate remedy for previous racially discriminatory attendance patterns." *Id.* at 436-437 (emphasis omitted). Finally, although this Court did not expressly decide the point, it stated that it was "clear" that there was "little substance" in the plaintiffs' argument that remaining problems in other aspects of the school system could alter this conclusion and justify continued enforcement of the portions of the desegregation decree related to student assignments. *Id.* at 438 n.5; see also *Morgan* v. *Nucci*, 831 F.2d at 318-319; *Flax* v. *Potts*, 915 F.2d 155, 158-159 (5th Cir. 1990).

Once a court finds that a school district has satisfied its constitutional obligations with respect to an aspect of its operations (such as student assignments), then, as the *Dowell* Court explained, the district "no longer requires court authorization for the promulgation of policies and rules" in that area. 111 S. Ct. at 638. At that point, the

court should evaluate future challenges to the school board's actions in that area under the general principles of this Court's Equal Protection jurisprudence, under which disproportionate impact is insufficient to establish a violation in the absence of intentional discrimination. See *Dowell*, 111 S. Ct. at 638. Of course, in determining whether a proposed change in the student assignment plan rests on an illicit motive, a court evaluating an intentional discrimination challenge should consider all relevant factors, including the history of segregation in the school system, the likelihood that the new plan will lead to racially identifiable schools (as far as that likelihood might suggest an illicit motive), the period during which the school board lawfully has complied with the decree, and the reasons proffered to explain the proposed change. See *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252, 266-268 (1977); *Penick*, 443 U.S. at 464-465.[13] In general, though, absent conduct that traverses these constitutional limits, a formerly segregated school system should have available to it the same, full range of legitimate educational choices—neighborhood schools, choice programs, magnet schools, and so forth—and be held to the same level of accountability by parents, as other school systems.

This does not suggest, however, any change in the court's approach in the areas from which the dual system has not yet totally been removed; in that context, official action that has a segregative effect still should be held unlawful. See, *e.g.*, *Wright*, 407 U.S. at 462; *Dayton Board of Education* v. *Brinkman*, 443 U.S. 526, 538 (1979) In those areas, the school board still has the burden of ensuring that its actions do not serve to perpetuate or re-establish the dual school system.

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[13] At that point, the burden will be on the plaintiffs to demonstrate that the school board has engaged in purposeful discrimination. See *Washington* v. *Davis*, 426 U.S. 229, 241 (1976); *Riddick* v. *School Bd.*, 784 F.2d 521, 538 (4th Cir.), cert. denied, 479 U.S. 938 (1986); *Oliver* v. *Kalamazoo Board of Education*, 640 F.2d 782, 810-811 (6th Cir. 1980).

In sum, if the court of appeals agrees with the district court's findings that the racial imbalances within the DeKalb schools were caused by demographic changes rather than invidious acts of the school board, then the vestiges of a dual system will have been eliminated as to student assignments, transportation, extracurricular activities, and facilities. See note 4, *supra*. Accordingly, the court should not require further action in those areas unless the DCSS intentionally discriminates in the future. As to the areas that were not fully desegregated at the time of the district court's decision—allocation of faculty, staff, and educational resources—the lower courts would retain authority under the decree to enjoin official actions that have a segregative effect in those areas and have no overriding educational justification, until such time as all the remnants of a dual system have been removed from those areas.

CONCLUSION

The judgment of the court of appeals should be vacated and the case remanded for consideration of whether the district court's factual findings were clearly erroneous.

Respectfully submitted.

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IN THE

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OCTOBER TERM, 1990

ROBERT R. FREEMAN, ET AL.,
Petitioners,
v.
WILLIE EUGENE PITTS, ET AL.,
Respondents

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF *AMICUS CURIAE* OF PLAINTIFF-INTERVENORS SEEKING REVERSAL IN PART AND AFFIRMANCE IN PART

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TABLE OF CONTENTS

Table of Authorities ii

Interest of Amici 1

Statement of the Case 2

Summary of the Argument 5

Argument 6

A. The Issue Presented by Plaintiff-Intervenors is Properly Before the Court 6

B. As Standards for Determining Whether Vestiges of a Dual System Have Been Eliminated From Every Aspect of School Operations, the *Green* Factors are Inadequate and Incomplete 7

C. The *Green* Factors Are Not Intended to be the Exclusive Measure by Which the Elimination of Vestiges of Segregation is to be Determined 10

D. A Public School System Cannot Be Wholly Free from Discrimination if Vestiges of Segregation are Present Within the Quality of Education Provided to its Students 12

Conclusion 17

TABLE OF AUTHORITIES

CASES: **Page**

Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation, 402 U.S. 313 (1971) 7

Board of Educ. of Oklahoma City Public Schools, v. Dowell, ____ U.S. ____, 111 S. Ct. 630 (1991) 11, 15

Cuyler v. Sullivan, 446 U.S. 335 (1980) 7

Davis v. Board of School Commissioners of Mobile County, 402 U.S. 33 (1971) 10

Green v. County School Bd., 391 U.S. 430 (1968) 2, 3, 5-16

Milliken v. Bradley, 433 U.S. 267 (1977) 11-15

Pitts v. Freeman, 887 F.2d 1438 (11th Cir. 1989) 4

Singleton v. Jackson Municipal Separate School District, 419 F.2d 1211 (5th Cir. 1969) 3

Stell v. Savannah-Chatham County Bd. of Educ., 888 F.2d 82 (11th Cir. 1989) 14

Swann v. Charlotte-Mecklenberg Bd. of Educ., 402 U.S. 1 (1971) 12, 15

United States v. Jefferson County Bd. of Educ., 380 F.2d 385 (5th Cir. 1967) 14

United States v. Mendenhall, 446 U.S. 544 (1980) 7

United States v. Montgomery Bd. of Educ., 395 U.S. 225 (1969) 12

Vance v. Terrazas, 444 U.S. 252 (1980) 7

SECONDARY SOURCES:

Comment, *Eliminating the Continuing Effects of the Violation: Compensatory Education as a Remedy for Unlawful School Segregation*, 97 Yale L.J., 1173, 1192 (1988) 14

Comment, *Unitary School Systems and Underlying Vestiges of State-Imposed Segregation*, 87 Columbia L. Rev., 794 (1987) 14

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ON WRIT OF CERTIORARI
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FOR THE ELEVENTH CIRCUIT

I.

INTEREST OF AMICI

This *amicus curiae* brief is filed on behalf of eighteen black parents of primary and secondary school-age children enrolled in public schools within the DeKalb County school district. These parents intervened in the district court below as additional named representatives of the plaintiff class.[1] Intervention was sought and granted subsequent to the issuance by the Eleventh Circuit Court of Appeals of the opinion which formed the basis of this Court's writ of *certiorari*.[2] Given that the appellate court directed that more needed to be done by Petitioners to rectify the effects of their prior illegal segregation, these parents intervened to ensure that quality education was not sacrified or

[1] Throughout this Brief, these parents will be referred to as "Plaintiff-Intervenors."

[2] A copy of the district court order allowing intervention by these parents is attached to this Brief as Appendix "A".

overlooked by the Petitioners or Respondents in carrying out the Eleventh Circuit's mandate.

The parties have consented to the filing of this brief and their consent letters have been filed with the Clerk of this Court.

II. STATEMENT OF THE CASE

The present school desegregation case originated with a Complaint which was filed in the United States District Court for the Northern District of Georgia on July 5, 1968. The district court's initial desegregation Order, entered on June 12, 1969, directed the provision of "remedial educational programs which permit students attending or who have previously attended segregated schools to overcome past inadequacies in their education." (Pet. App. 32a).[3] This initial Order was thereafter modified and supplemented on several occasions.

On January 16, 1986, the DeKalb County School System ("DCSS") moved for an order releasing it from the jurisdiction of the district court and for a declaration that the DCSS had attained unitary status. The Court held a hearing on this motion on July 6-22, 1987.

On June 30, 1988, the district court denied the DCSS's motion. In reaching its decision, the district court evaluated six factors relevant to this determination as posited in *Green v. County School Bd.*, 391 U.S. 430 (1968). With respect to four of the categories enumerated in *Green* —

[3] References to particular pages of the appendices of the DeKalb County School Board's petition for a Writ of *Certiorari* to the United States Court of Appeals for the Eleventh Circuit shall hereinafter be identified by the phrase "Pet. App.", followed by reference to the particular page of the appendices being cited.

student assignment, transportation, extracurricular activities and facilities — the district court declined to impose additional duties on the DCSS. (Pet. App. 44a-48a, 59a, 71a-72a). With respect to two other *Green* factors — faculty and staff — the district court ordered the DCSS to file a report and present a plan sufficient to meet the dictates of *Singleton v. Jackson Municipal Separate School District*, 419 F.2d 1211 (5th Cir. 1969)(*en banc*)(requiring racial equality in the assignment of teachers and principals), *rev'd. per curiam on other grounds*, 396 U.S. 290, *cert. denied*, 396 U.S. 1032 (1970). (Pet. App. 57a-59a, 71a-72a).

The parties had additionally requested that the court consider a seventh factor — "quality of education" — in determining whether unitary status had been achieved. The district court granted this request, and this seventh factor was considered by the court, which observed as follows:

> The court agrees that quality of education should properly be addressed.
>
> . . .
>
> The court considers this area of dispute to be of utmost importance. The crux of the Supreme Court's decision in *Brown* was that the maintenance of separate but equal facilities for black students did not assure that black children obtained a quality education. Although quality of education is not one of the six classic areas of inquiry in school desegregation cases . . . the defendants did not protest litigation of this area. The defendants acknowledge that a school sys-

> tem that is not fulfilling its obligation of providing quality education to all school children should not be entitled to unitary status.

(Pet. App. 29a, 60a).

The court placed the burden of proof upon the DCSS with respect to this seventh factor (Pet. App. 60a). The court also rejected the DCSS's contention that relief in this area was not proper, noting that "[a] district court properly has broad discretion in desegregation cases to order relief that will facilitate the speedy eradication of all vestiges of the former dual system. Improving the quality of education for all children, especially black children, is the underlying purpose of all desegregation cases." (Pet. App. 71a).

With respect to this seventh factor — "quality of education" — the district court extensively reviewed the DCSS's allocation of educational resources and the achievement of students. (Pet. App. 60a-71a). Based on this review, the district court ordered the DCSS to distribute its experienced teachers and teachers with advanced degrees equally and to equalize expenditures among the schools. (Pet. App. 65a-70a). The court also ruled that further supervision of the DCSS was not necessary to ensure that it continue to take steps to facilitate the education of black students. (Pet. App. 62a-65a, 69a-70a).

On November 13, 1989, a panel of the U.S. Court of Appeals for the Eleventh Circuit reversed certain portions of the district court's decision. *Pitts v. Freeman*, 887 F.2d 1438 (11th Cir. 1989). Specifically, the appellate court held that the trial court had erred in ruling that unitary status could be achieved "incrementally." (Pet. App. 14a-17a).

The court of appeals further held that the DCSS was responsible for any resegregation in student assignment — even that which was caused by a demographic shift in the county — until unitary status was achieved in all areas within the school system. (Pet. App. 18a-22a). The court of appeals also rejected the district court's separate consideration of "quality of education", directing that this seventh factor should be considered only to the extent that it could be subsumed within the six *Green* factors. (Pet. App. 13a-14a, n. 8).

On February 12, 1990, the DCSS filed in this Court its Petition for Writ of *Certiorari*, seeking review of two issues. First, the DCSS sought review of the appellate court's ruling that unitary status could not be achieved incrementally. Second, the DCSS challenged the appellate court's ruling that the DCSS was obligated to prevent resegregation, even where that resegregation was not directly caused by the DCSS, as long as the overall school system had not achieved unitary status. On February 20, 1991, this Court granted the DCSS's Petition for Writ of *Certiorari*, agreeing to review the two questions presented by the DCSS.

III.

SUMMARY OF THE ARGUMENT

The mandate of the Equal Protection Clause in cases such as the present one is to achieve a public school system wholly free from racial discrimination. This objective requires that *every* aspect of the educational system is to be freed from the discriminatory vestiges of illegal conduct. Before determining whether the eradication of those vestiges must be incremental or simultaneous, the

Court must first determine the standards by which such vestiges are to be identified.

In determining whether the vestiges of prior illegal segregation within a public school system have been eliminated sufficiently to satisfy the mandate of the Equal Protection Clause, the Court's consideration should not be limited to the six components of school system operation identified in *Green*. Rather, the Court's consideration should extend to *every* aspect of the educational system, including quality of education. To the extent that the decision of the court of appeals precludes this expanded examination by a district court, that decision is erroneous.

It is, therefore, the position of these Plaintiff-Intervenors that the district court should continue to scrutinize all aspects of the school system's operations, including the quality of education within the system, for vestiges of discrimination which are caused by the DCSS's illegal segregation.

IV.

ARGUMENT

A. The Issue Presented by Plaintiff-Intervenors is Properly Before the Court.

Any decision by this Court in the present case will be examined by the courts below for guidance as to the proper standards to be used in determining whether vestiges of a prior dual system have been eliminated and, thus, whether the mandate of the Equal Protection Clause has been satisfied. In its Petition for Writ of *Certiorari*, the DCSS has asked this Court to clarify whether such vestiges must be eliminated simultaneously from all

facets of school system operations. Unless this Court clarifies what is meant by all aspects of school system operations, however, its guidance to the lower courts will be ambiguous and incomplete.

The precise meaning of the term "unitary status" and the criteria for determining whether vestiges of a prior dual system have been eliminated are thus predicate issues to the intelligent resolution of the questions on which *certiorari* was granted. A precise definition of the facets to be considered in determining the existence of unitary status is essential to the correct disposition of the questions presented in the petition for *certiorari*. Accordingly, the issue presented herein by Plaintiff-Intervenors is appropriate for consideration by the Court in the context of this proceeding. *Cuyler v. Sullivan*, 446 U.S. 335 (1980); *Vance v. Terrazas*, 444 United States 252 (1980); *United States v. Mendenhall*, 446 U.S. 544 (1980); *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313 (1971).

B. As Standards for Determining Whether Vestiges of a Dual System Have Been Eliminated From Every Aspect of School Operations, the Green Factors are Inadequate and Incomplete.

The court of appeals concluded that the *Green* Court intended quality of education to be considered only "in conjunction with each of its six enumerated factors." (Pet. App. 14a, n. 8). Accordingly, it directed the district court to consider the distribution of educational resources only "in relation to the area in which the school system applies the resource." (Pet. App. 14a, n. 8). However, several of the indicia of quality of education considered by the district court do not fall within any of the areas described

in *Green*. The directive of the court of appeals thus effectively precludes consideration of those important aspects of quality of education.

In the present case, the district court found that "[b]oth the allocation of educational resources and the achievement of students are interrelated issues that must be examined to determine whether black students are receiving the same quality education as white students." (Pet. App. 62a). Accordingly, the court embarked upon an extensive examination of both of these "interrelated issues." (Pet. App. 62a-71a).

The district court utilized several criteria for measuring the "allocation of educational resources." (Pet. App. 65a-71a). Some of these criteria (teacher education, teacher experience, and teacher turnover)[4] are in some way related to the "faculty" issue identified in *Green*, but the elements which were considered by the district court in examining these criteria differed from the elements which were considered in examining the "faculty" issue.[5] Other "resource-allocation" criteria examined by the district court (per pupil expenditure, library books per

[4] In its discussion of "quality of education," the district court found that, on average, historically black schools had less experienced teachers, fewer teachers with advanced degrees, and a higher rate of teacher turnover. (Pet. App. 65a-68a).

[5] In its examination of the "faculty" and "staff" criteria identified in *Green*, the district court and the appellate court considered only the distribution of black and white teachers throughout the system, without reference to levels of teacher education, teacher experience, or teacher turnover. (Pet. App. 17a-18a, 48a-59a). Instead, these latter criteria were considered by the district court only under the heading of "quality of education." (Pet. App. 65a-68a).

student)[6] are some ways related to the "facilities" issue identified in *Green*, but the elements which were considered in examining these criteria differed from the elements which were considered in examining the "facilities" issue.[7] Moreover, several of the criteria examined by the district court relative to resource allocation — or school treatment — are largely unrelated to any *Green* factor. These resource-allocation criteria examined by the district court — but unrelated to any *Green* factor — include student retention, uniformity of curriculum, the presence of innovative educational programs, and the availability of supplementary instructional personnel. (Pet. App. 60a-62a, 69a-70a) .

While several of the resource-allocation criteria examined by the district court are unrelated to any *Green* factor, the same can also be said of *all* of the criteria examined by the district court with respect to student achievement. In considering student achievement, the court examined the relative progress of black and white students as measured by the Iowa Tests of Basic Skills. (Pet. App. 63a-64a). In addition, the district court compared the performance of black and white students within the system

[6] In its discussion of "quality of education," the district court found that the DCSS invested "a larger percentage of its financial resources" in predominantly white schools, rather than in other schools where the needs were "more significant." (Pet. App. 70a).

[7] Inasmuch as Respondents below conceded that the DCSS had fulfilled its constitutional obligation in the area of "physical facilities," this area was not subjected to an in-depth examination by the district court. (Pet. App. 59a-60a). However, it appears that the court's limited consideration of the "physical facilities" issue identified in *Green* related only to buildings and grounds rather than money and books. (Pet. App. 59a-60a).

as measured by the Scholastic Aptitude Test with the performance of black and white students nationwide. (Pet. App. 64a). It also compared the performance of black students and white students within the system as measured by promotions and as measured by the California Achievement Test. (Pet. App. 64a). However, there is no *Green* factor which accommodates such an examination.

In determining whether black students in the DCSS obtain quality education, the district court thus examined several useful criteria. These criteria are useful because they focus on resources and on results.[8] However, many of these criteria are incapable of being subsumed within any *Green* factor. Nevertheless, it would be improper to exclude these criteria from any listing which purports to include "every aspect of school operations."

C. The Green Factors Are Not Intended to be the Exclusive Measure by Which the Elimination of Vestiges of Segregation is to be Determined.

While the district court considered "quality of education" as a seventh factor in evaluating whether the vestiges of the old dual system had been eliminated, the court of appeals disapproved consideration of any factor other than those expressly enumerated in *Green:*

> The district court also considered a seventh factor: "quality of education". We conclude that the *Green* Court intended quality of education to be

[8] There is ample authority for evaluating a school system's progress in terms of results. See, e.g., *Davis v. Board of School Commissioners of Mobile County*, 402 U.S. 33, 37 (1971) ("The measure of any desegregation plan is its effectiveness.").

> considered in conjunction with each of its six enumerated factors. *See, Green*, 391 U.S. at 435 (describing the six factors as comprising "every facet of school operations"). In this case, the district court should consider the distribution of educational resources in relation to the area in which the school system applies the resource.

(Pet. App. 14a, n. 8).

The restrictive approach taken by the court of appeals is unsupported by the facts of this case. As shown above, the district court demonstrated the existence of several types of resources which have no corollary in any *Green* factor. The district court's analysis also recognized the importance of student achievement, an issue which transcends the resource-allocation criteria embodied in *Green* but which lies at the core of quality education. In a system in which the education of black children has been characterized by "past inadequacies", the elimination of *all* such inadequacies must be a principal concern.

The refusal by the court of appeals to consider factors other than those enumerated in *Green* is also unsupported by the applicable law. This Court has recently cautioned against the use in school desegregation cases of mechanical formulas not actually found in the Constitution. "The constitutional command of the Fourteenth Amendment is that '[n]o State shall . . . deny to any person . . . the equal protection of the laws'." *Board of Educ. of Oklahoma City Public Schools v. Dowell*, ___ U.S. ___ , 111 S. Ct. 630, 636 (1991). In responding to this constitutional command, the basic task of the courts is to achieve *"a public school system wholly free from racial discrimination." Milliken v. Bradley*, 433 U.S. 267, 283

(1977) *("Milliken II")* (quoting *United States v. Montgomery Bd. of Educ.*, 395 U.S. 225, 231-32 (1969))(court's emphasis). The objective in converting a school system from dual to unitary is "to eliminate from the public schools *all* vestiges of state imposed segregation." *Swann v. Charlotte-Mecklenberg Bd. of Educ.*, 402 U. S . 1, 15 (1971) (emphasis supplied).

Given this broad objective, constitutional compliance cannot be predicated simply upon the absence of any vestige of illegal segregation in any of the six areas of school operation enumerated in *Green*. To argue to the contrary would be to elevate these six factors from mere indicators to exclusive categories. This transformation would be especially improper given this Court's recognition that those factors are merely indicative, not determinative, of whether a school system has eradicated all vestiges of discrimination from its school operation. *See, Swann*, 402 U.S. at 18 (describing the *Green* factors as "*among* the most important indicia of a segregated system.") (emphasis added).[9]

D. A Public School System Cannot Be Wholly Free from Discrimination if Vestiges of Segregation are Present Within the Quality of Education Provided to its Students.

This Court has already sanctioned the consideration of factors other than those enumerated in *Green* in de-

[9] Even the court of appeals, in its opinion below, recognized that "the *Green* factors are not entirely synonymous with the vestiges of past discrimination," and that "these vestiges encompass more than the *Green* factors..." (Pet. App. 14a-15a). In the light of these observations, the appellate court's refusal to permit consideration of factors not enumerated in *Green* is especially incongruous.

termining whether all vestiges of a previous dual system have been eliminated. In *Milliken II, supra,* this Court acknowledged that any condition within a school system which violates the Constitution or which flows from such a violation is impermissible and subject to remediation. *Milliken II*, 433 U.S. at 282-283. Where a constitutional violation has been found, the Court in *Milliken II* determined that "the remedy does not 'exceed' the violation if the remedy is tailored to cure the *'condition* that offends the Constitution.'" 433 U.S. at 282 (quoting *Milliken v. Bradley*, 418 U.S. 717, 738 (1974))(court's emphasis). Where the "condition" offending the Constitution is a *de jure* segregated school system, it may be so pervasively and persistently segregated as to give rise to a need of compensatory educational programs. *Id.* at 283-88.

As an example of how the need for compensatory education may itself be a vestige of segregation, the Court in *Milliken II* noted that

> [c]hildren who have been thus educationally and culturally set apart from the larger community will inevitably acquire habits of speech, conduct, and attitudes reflecting their cultural isolation. They are likely to acquire speech habits, for example, which vary from the environment in which they must ultimately function and compete, if they are to enter and be a part of that community.

Id. at 287. Noting the "central *educational* function of the schools",[10] *Milliken II* thus suggests that the need of black children for compensatory education, because of a disparity between the achievement of black children and that of white children, may itself be a vestige of segregation. In *Milliken II*, "the Court not only extended its conception of the systemic vestiges that may require elimination before unitary status can be achieved beyond that it had articulated in *Green*, but recognized that the individualized effects of unlawful segregation may also need remediation." Comment, *Eliminating the Continuing Effects of the Violation: Compensatory Education as a Remedy for Unlawful School Segregation*, 97 Yale L.J., 1173, 1192 (1988). Following *Milliken II*, commentators have recognized that a gap between the educational achievement of black students and their white counterparts may itself be a vestige of "a previously inferior education." *See, e.g.*, Comment, *Unitary School Systems and Underlying Vestiges of State-Imposed Segregation*, 87 Columbia L. Rev., 794, 801 (1987). Unless a district court is permitted to give full consideration to the disparities in the quality of education available to black and white children, that court will forever be unable to reach an adequate and accurate determination as to whether the school system is wholly free from discrimination.

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[10] 433 U.S. at 280, n. 15 (court's emphasis). Several lower courts have recognized this "central educational function". *See, e.g., Stell v. Savannah-Chatham County Bd. of Educ.* 888 F.2d 82, 85 (11th Cir. 1989) ("The goal is education"); *United States v. Jefferson County Bd. of Educ.*, 380 F.2d 385, 389 (5th Cir. 1967) ("If Negroes are ever to enter the mainstream of American life, as school children they must have equal educational opportunity with white children.")

It is thus clear that compliance with the Fourteenth Amendment cannot be predicated solely upon the absence of discriminatory vestiges within the six facets of a school's operation identified in *Green*. Rather, the existence of vestiges of illegal segregation within any aspect of a public school system precludes a finding of constitutional compliance.

A construction of *Green* which allows federal courts to find constitutional compliance merely upon review of the six limited categories of *Green* mistakenly treats those categories as if they were some magic talisman in determining whether a school system has automatically complied with its constitutional obligation. However, this Court's opinion in *Dowell, supra*, cautions against such a mechanical, limited interpretation, emphasizing that artificial labels are not the important issue in school desegregation cases. Rather, the dispositive issue is whether the Equal Protection Clause has been offended.

The limited scrutiny approved by the Eleventh Circuit Court of Appeals is clearly at odds with this Court's prior rulings that *any* condition within a public school system which offends the Constitution must be remedied before compliance with the Fourteenth Amendment can be found to exist. Moreover, the appellate court's narrow reading of *Green* invites federal courts to ignore the presence of discriminatory vestiges in the very centerpiece of public schools, namely, the quality of education provided to each student.

This Court's earlier opinions in *Swann*, *Milliken II*, and *Green* counsel that, within the primary and secondary public school context, compliance with the Equal Protection Clause will be found only where no vestige of illegal discrimination exists anywhere within the school system. This direction necessarily compels evaluation of the entire educational process of a school system. Whether or not the six factors mentioned by the *Green* Court are met is not, in and of itself, determinative. Rather, at the very least, federal courts supervising the remedial efforts of public school systems must evaluate whether the quality of education provided therein has been affected by illegal discrimination. Any evaluation short of this ignores the teachings of this Court and the public school systems' central goal of educating students.

IV.

CONCLUSION

First and foremost, Plaintiff-Intervenors respectfully request that this Court direct that quality of education, along with all other facets of a school system's operation, must be free from vestiges of illegal segregation before a school system which once segregated its students on the basis of race can be declared to have remedied its prior illegal conduct. To the extent that it holds to the contrary, the ruling of the court of appeals should be reversed.

Further, Plaintiff-Intervenors request this Court to affirm the judgment of the Eleventh Circuit Court of Appeals to the extent that it holds that a school system must simultaneously eradicate all vestiges of illegal discrimination in all areas within that school system. Finally, Plaintiff-Intervenors request this Court to reverse the appellate court judgment insofar as it obligates the Petitioners to remedy any racial imbalance in student assignment which was caused by demographic changes and not by the Petitioners.

Respectfully submitted,

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APPENDIX OF PLAINTIFF-INTERVENORS

No. 89-1290

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

ROBERT R. FREEMAN, ET AL.,
Petitioners,
v.
WILLIE EUGENE PITTS, ET AL.,
Respondents

APPENDIX OF PLAINTIFF-INTERVENORS

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IN THE UNITED STATE DISTRICT COURT FOR
THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FRANKIE PRATHER, et al.	:	
	:	
VERSUS	:	CIVIL NO. 11946-WCO
	:	CT. AP.# 91-8065
ROBERT R. FREEMAN, et al.	:	

ORDER

This case is presently before the court on the following motions: (1) motion by various class members to intervene or create a sub-class; and (2) motion by plaintiffs to join or add the DeKalb County Branch of the NAACP ("DeKalb Branch"), Adesina Scott, Adreana Scott, Ardona Scott, Artemis Mills, Valencia Mills (each by their parents and next friends), and Berta Mills. On April 26, 1990, the defendants moved that a hearing be conducted with regard to the intervention issue. The court granted this motion, and accordingly held a hearing in the nature of a trial from August 6 to August 9, 1990 and August 15 to August 16, 1990.[1] During the course of this hearing, the intervenors, plaintiffs, and defendants each examined and cross-examined witnesses, and introduced evidence.

After reviewing the testimony, evidence, and arguments of the parties, for the reasons set forth below, the court rules as follows: (1) motion to intervene is granted; (2) plaintiffs' motion to join or add parties is denied with respect to the DeKalb Branch and Artemis Mills, but

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[1] The hearing pertained to the motion to join or add parties, as well as the motion to intervene.

granted with respect to the remaining individuals. In addition, the court redefines the class to include all black children enrolled in the DeKalb County School System ("DCSS") and their parents or guardians.[2]

I. FINDINGS OF FACT

A. *Intervention*

Eighteen parent members[3] of the plaintiff class have moved to intervene as class representatives in the captioned lawsuit on behalf of their children. In support thereof, they cite a failure on the part of the current class representatives[4] to adequately represent their views and the views of many other class members. The intervenors[5] seek one of three alternative remedies for this alleged inadequacy of representation — (1) substitution of themselves for the present class representatives; (2) intervention as class representatives in addition to the present class representatives; or (3) creation of a sub-class with them as the representatives of that sub-class.

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[2] The court notes that the Southeastern Legal Foundation has filed a motion for leave to file an amicis curiae brief in the captioned case, and has submitted that brief therewith. The Foundation's motion is granted, and the court, accordingly, has reviewed and considered the arguments raised in the amicus brief in reaching its decision.

[3] These individuals are: Harold M. Armstrong, Asahiti El-Shabazz, Narwanna El-Shabazz, Carolyn Saunders, Wayne Jones, Carolyn Jones, Adib Sabir, Mahasin Sabir, Grace Thomas, Marguerite Creamer, Evelyn Bailey, Larry Bailey, Karen Russell, Kevin Russell, Nina Perry, William McVay, Rose Stewart, and Betty Blake.

[4] These individuals, Major Scott, Cynthia Scott, and Roger Mills, will be referred to interchangeably as "class representatives" or "plaintiffs."

[5] The court will refer to the movants for intervention as the "intervenors."

During the course of the hearing, eleven witnesses testified on behalf of the intervenors. Nine of these witnesses consisted of black parents of children enrolled in various schools within the DCSS,[6] though not all of them were intervenors. Overall, the court found these witnesses to be very knowledgeable and active with regard to the DCSS. Seven of them hold or have held various leadership positions within their respective Parent-Teacher Associations. The others, though maybe not as involved in the organizational sense, appeared highly informed and concerned, nonetheless.

The black parents who testified for the intervenors were uniformly opposed to mandatory busing and indicated that most black parents with whom they have contact express similar opposition. The intervenors' witnesses believe that quality of education should be the most important consideration, and should not be sacrificed solely for the purpose of obtaining strict racial balance through busing. Despite their staunch opposition to mandatory busing, however, the court found that when pressed on the issue, most of the parents conceded that if all voluntary methods of desegregation failed, involuntary means may become necessary.

The court further finds that the black parents that testified for the intervenors believe, for various reasons, that the plaintiffs and their counsel are completely and solely in favor of mandatory busing as a means of deseg-

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[6] The two remaining witnesses were Harry L. Ross, president of H. Ross Research Enterprises, Inc., who testified with regard to the "Ross Poll," and Judge Benjamin W. Spaulding, Jr. who testified with regard to his involvement with *Calhoun v. Cook*, the Atlanta school desegregation case.

regation. The presence of such a myopic view of the remedies in this case on the part of the plaintiffs, according to the intervenors, is precisely why intervention is necessary. In other words, the *intervenors feel that their opinions are being ignored by the plaintiffs, and therefore their involvement as representatives in the case is essential to ensure that all remedial avenues are properly explored.*

The intervenors also cross-examined the current class representatives, Mr. Mills, Mrs. Scott, and Mr. Scott. From the testimony of Mr. and Mrs. Scott, as well as the testimony of others with regard to them, the court finds that neither of them has been a very involved class representative. In addition, their understanding of the case is superficial, to say the least.

Significantly, at one point during her testimony, Mrs. Scott indicated that she does not oppose the proposed intervention, even though she previously had indicated the contrary in her affidavit. Mr. and Mrs. Scott are clearly more amenable to mandatory busing than the intervenors. Mr. Scott, however, inconsistent with his busing position, stated that he felt that he should have the choice of sending his kids to community schools.

Mr. Mills, on the other hand, clearly has a very keen understanding of this litigation. He has shown great dedication and commitment to his role as a class representative. The court observes, however, that his testimony indicates that he maintains a very paternalistic view of that role. Mr. Mills is of the opinion that the intervenors are naive and ill-informed to believe that voluntary desegregation remedies can be successful. He pays lip service to the notion of voluntary desegregation remedies, but it is

obvious that he has a totally skeptical view of the possible success of any such measures.

Six black parents testified on behalf of the plaintiffs. As with the witnesses called by the intervenors, the plaintiffs' witnesses were likewise well-informed and very involved in their children's education. Interestingly, the court found very little difference between the views and concerns expressed by these witnesses and those expressed by the intervenors' witnesses. They of course differ with regard to who they thought would more adequately represent the class, but besides that, there are few noticeable differences. Most significantly, the plaintiffs' witnesses, by and large, did not appear as one dimensional in their views with respect to the appropriate remedies as Mr. Mills or the other plaintiffs. Like the intervenors, their major concern is that all children receive a quality education. In addition, one of the plaintiffs' witnesses, Barbara Lee, indicated that she did not oppose intervention so long as the current class representatives are not displaced.

Although there appears to be some concern on the part of the plaintiffs that the intervenors intend to violate the Eleventh Circuit's mandate,[7] the court finds that the

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[7] *See Pitts v. Freeman*, 887 F.2d 1438 (11th Cir. 1989). At the "intervention" hearing, the plaintiffs introduced into evidence a letter from Charles Johnson, attorney for the intervenors, to Marcia Borowski, attorney for the plaintiffs, requesting that she file a petition for a writ of certiorari with the United States Supreme Court with regard to the Eleventh Circuit's decision in this case. Ms. Borowski and the plaintiffs refused this request, and now argue that it would have been ludicrous and clearly not in the best interest of the class to

intervenors are committed to upholding the Eleventh Circuit opinion. The court also finds that the intervenors are not totally monolithic and unyielding in their position, but rather would be amenable to entertaining all views in this case.

B. *Joining or Adding Parties*

1. DeKalb Branch

At the outset, the court notes that the DeKalb Branch has been involved in this case throughout its pendency. The court is well aware that the DeKalb Branch has provided the plaintiffs with both legal and financial resources, and that it has also served in somewhat of an advisory capacity. Until the intervention hearing, however, the court had no idea of the actual magnitude of this involvement.

After listening to the testimony of various witnesses regarding the DaKalb Branch's involvement, the court is convinced that, for the most part, it has been controlling this litigation. Critical decisions such as the ones to appeal

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petition the Supreme Court for certiorari in a case that they had "won."

Such a statement may have been accurate if the intervenors had been seeking, through their request, to have the entire Eleventh Circuit decision reversed. This, however, was not their intent. Rather, they were concerned primarily with the Eleventh Circuit's pronouncement that "quality of education" is not a separate and independent consideration in the "unitariness" calculus. *See* 887 F.2d at 1445 n.8; *see also* Plaintiffs' Exhibit No. 2. As a result, the court finds that the intervenors' request that the plaintiffs file a petition for a writ of certiorari does not indicate contempt for the mandate. It simply shows that the intervenors believe that the court of appeals was incorrect with regard to a particular aspect of its decision.

this court's order of 1988 and to terminate the plaintiffs' former counsel, Don Edwards, were apparently made largely at the direction of the DeKalb Branch.[8] In addition, a statement was drafted by this organization, with little apparent input from the plaintiffs, that purports to express the views of both the plaintiffs and the NAACP. *See* Intervenors' Exhibit No. 11.

The court finds that the decision to seek the addition of the DeKalb Branch as a party was, at least in part, a reaction to the motion to intervene or create a sub-class. The plaintiffs hoped that by adding the DeKalb Branch they could better resist the intervenors' challenge to the adequacy of the current class representation.

Both the defendants and the intervenors asked numerous witnesses how they thought conflicts between the DeKalb Branch and the class representatives would be resolved, assuming of course that the DeKalb Branch is indeed added as a party. For the most part, the witnesses equivocated, indicating only that they could not foresee an irreconcilable conflict ever arising. Patricia Jones, President of the DeKalb Branch, stated on cross-examination, however, that in the event of an unresolvable conflict, "[t]he National — the board will — we would take the position that the DeKalb NAACP and the National Office decide on."

NAACP officials were also asked to what degree local branches are required to abide by national rules and

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[8] According to the testimony of Zepora Roberts, chair of the Dekalb Branch's Education Committee, Mr. Mills attended the meeting regarding the appeal of this court's order, but neither of the Scotts were present.

guidelines. In short, they indicated that local branches, including the DeKalb Branch, are required to follow national rules if they wish to remain viable, but that this did not mean that the national organization would seek to control this litigation, in the event that the DeKalb Branch is added as a party.

The court observes, however, that several of the NAACP's guidelines appear to indicate that the National NAACP would have a great deal of control. Part IX of the "NAACP Civil Rights *Handbook*," for example, provides in part that:

> Where negotiated plans are voluntary or the result of litigation, NAACP Branches or representatives *must not* become a party to or give approval of any plan or settlement in the local community without *first* consulting with and submitting said plan to the National Office for examination and written approval.

Defendants' Exhibit No. 3, NAACP Civil Rights *Handbook*, p. 42 (emphasis in original). In addition, the *Handbook* states that:

> Assuming approval is given for [a] unit to become involved in . . . litigation, the General Counsel reserves the right to personally, or through his designees(s) [sic], represent the Association. This will ordinarily mean that, minimally, the General Counsel should be listed on the papers unless another member of the Legal Department's staff has been previously designated.

Id at p. 5.[9] Given this, if the DeKalb Branch is added, the court finds that the national organization would have a very powerful voice in this case, if not the final say in many instances.

The court further concludes that the DeKalb Branch only wishes to assert that which the plaintiffs are currently asserting. It does not seek to add anything new, nor does it oppose anything presently being advocated by the plaintiffs. In addition, the DeKalb Branch has not expressed any dissatisfaction with the current class representatives or their counsel. In fact, if added, the lead counsel for the DeKalb Branch will be the plaintiffs' present attorney, Ms. Borowski.

Lastly, the court observes that as an entity, the DeKalb Branch does not qualify as a class member as redefined by the court in this order.

2. Other Parties

The plaintiffs have also moved for the removal of Princess Mills and Frankie Prather as plaintiffs in this case, and the addition of certain children of the current class representatives (by their parents and next friends). In addition, the plaintiffs seek to have Berta Mills, former wife of Roger Mills, added as a named plaintiff.

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[9] Another example of the degree of control exerted by the national organization in legal matters can be found in Part III of the *Handbook*, where it is stated that:

> The national legal staff should be advised of every legal step before it is taken. If this advice is followed, we normally will not have to concern ourselves with being unable to appeal because of some technicality...

Defendants' Exhibit No. 3, NAACP Civil Rights *Handbook*, p. 11.

The children that the plaintiffs seek to add are: Adesina Scott, Adreana Scott, Ardona Scott, Valencia Mills, and Artemis Mills. With regard to these individuals the court finds that each of them, with the exception of Artemis Mills, is presently enrolled in the DCSS. As for Ms. Mills, the court finds that she currently has physical custody of her children, though she shares legal custody with Mr. Mills.

II. CONCLUSIONS OF LAW

A. *Adequacy of Current Class Representation*

As stated, in support of their motion to intervene, the intervenors cite a failure on the part of the current class representatives to adequately represent their views and the views of many other class members. They assert that any one of the following three alternatives can remedy this situation: (1) replace the current class representatives with the intervenors; (2) allow the intervenors to intervene as class representatives in addition to the present representatives; or (3) create a sub-class with the intervenors as the representatives of that sub-class. For the reasons set forth below, the court concludes that the appropriate remedy is intervention by the intervenors without displacement of the current class representatives.

1. Replacement of Current Class Representatives

The intervenors first argue that the present class representatives do not adequately represent the views of the class, and therefore should be relieved of their role as representatives. Although the intervenors claim that Mr. and Mrs. Scott are inadequate because they are uninvolved and not well informed,[10] for the most part, their "inadequacy" argument focuses more upon the assertion that they, rather than the plaintiffs, would be the "most adequate" class representatives.[11]

According to the intervenors, the most adequate representatives of a class are those individuals who will represent the majority of the class' wishes. *See* Intervenors' Brief Regarding Proper Class Representation, pp. 9-10. The intervenors allege that the plaintiffs cannot meet this criteria because they are in favor of strict racial balance, achieved through massive, involuntary busing, whereas the majority of the class opposes mandatory busing.[12]

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[10] The court has some serious concerns with the quality of class representation provided by Mr. and Mrs. Scott. That concern, however, is not so great as to warrant their removal on the grounds of inadequacy.

[11] The intervenors also appear to argue at one point that Ms. Borowski is inadequate as class counsel, and hence should be removed. The court notes, however, that the intervenors have not questioned, and indeed cannot question, Ms. Borowski's professional competence or her vigorousness as an advocate in this suit.

In addition, the intervenors' allegation of the existence of some irreconcilable conflict arising from Ms. Borowski's representation of both the plaintiffs and the Dekalb Branch should no longer be of concern, given that the court has denied the plaintiffs' motion to add the Dekalb Branch as a party. *See infra* at pp. 23-26.

[12] The intervenors apparently rely heavily on the "Ross Poll" to support their contention that the majority of black parents with children in the DCSS oppose mandatory busing to achieve racial balance. *See* Intervenors' Exhibit No. 6. As will be discussed, the court has some serious reservations with regard to this poll, and accordingly gives it very little evidentiary weight.

In addition, the court notes that in opposition to the intervenors' arguments, the plaintiffs assert that the intervenors have

The court does not agree with the intervenors' proposition that the most adequate representatives are those who represent the views of the majority of the class. The intervenors claim that this proposition is supported by *East Texas Motor Freight System Inc. v. Rodriguez.*, 431 U.S. 395 (1977), in which they allege that the Supreme Court deemed "the purported class representatives inadequate . . . *precisely* because the majority of the class members disavowed the relief sought by the self-proclaimed representatives." Intervenors' Brief Regarding Proper Class Representation, p. 10 (emphasis added). In addition the intervenors assert that the Court "[q]uite simply, [found that] representative status in a class action could not be given to individuals who were not reflective of the purported beneficiaries' wishes." *Id.*

If these clear, definitive statements were actually present in or supported by the Court's opinion, this court would have no difficulty accepting such statements as the law. After reading *East Texas* several times, however, the court can only conclude that the intervenors have significantly embellished the Supreme Court's holding to cover the factual setting presented in this case.

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mischaracterized their position as being one in favor of massive, involuntary busing. On the contrary, the plaintiffs claim that they are supportive of any measure that can achieve the constitutionally mandated goal of "maximum feasible desegregation." In addition, they assert that the fact that the intervenors possess a different view as to the types of remedies to be sought does not justify displacement of the current class representatives. In the plaintiffs' view, so long as they are vigorously pursuing maximum feasible desegregation, they are adequate and should remain as the lone class representatives.

In *East Texas*, which involved a class action under Title VII, the named plaintiffs sought a merger of "city- and line-driver collective bargaining units." *Id.* at 405. A large majority of the class, however, had previously rejected this very same proposal. Clearly, the position taken by the named plaintiffs in *East Texas* and the majority of the class were completely opposite. In addition, the Court found that the class representatives were not members of the class they purported to represent and that they had failed to move for class certification. Given this, the Court had no difficulty concluding that the named plaintiffs did not fairly and adequately represent the views of the class. *Id.* at 403-05.

In this court's opinion, the Supreme Court in *East Texas* did not hold that the most adequate representatives are those who represent the views of the majority of the class. The fact that the relief sought by the named plaintiffs was opposed by the majority of the class was but one factor that contributed to the Court's ultimate conclusion. In addition, the court notes that the views of the named plaintiffs and the majority of the class were diametrically opposed — the plaintiffs sought something that the majority had specifically rejected. After listening to six days of testimony in the captioned case, the court is convinced that, overall, such diametric opposition is not present between the views of the plaintiffs and those of the intervenors, with the possible exception of some of the views expressed by Mr. Mills and Ms. Borowski.

The intervenors also rely upon *Hansberry v. Lee*, 311 U.S. 32 (1940), to support their position. The court finds, however, that, once again, their reading of the case is overly broad. As with *East Texas*, this case stands for the

proposition that when two totally opposite interests may be asserted with regard to an issue in a class action, the individuals who support one interest cannot be deemed to adequately represent those who support the opposite interest. In *Hansberry*, the owners of certain plots of land in a particular area agreed in writing to restrict to whom their land could be sold. The Court found it clear that the owners who desired to have the agreement enforced could not adequately represent the interests of those owners who sought to resist performance. *See id.* at 44.

A helpful analogy to both of these cases would be a coin toss between two individuals. With a coin toss, each individual has an interest in one object, however, one person wants the coin to land heads up while the other desires tails up. The views of the intervenors and the plaintiffs in this lawsuit, though different to an extent, are definitely not polar opposites an was the case in the "coin toss-type" situations found in *Hansberry* and *East Texas*. As with all desegregation cases, the captioned case involves numerous types of potential remedies, and hence does not fit neatly within the "either or" scenario found in these Supreme Court cases.

The court is of the opinion that in class actions, particularly those involving school desegregation, it is essential that all views be heard. Whether a specific view is supported by a majority or a minority of a class is irrelevant for the court's purposes. In the end, *this court* must determine what remedies will best effectuate maximum feasible desegregation, not which views carry the greatest popular support. Democratic notions of majority rule, while logical to a certain degree in the class action context, do not serve the court's needs in the captioned case.

Neither do such notions best serve the interests of the members of the class — those interests are best served by allowing the court to hear all views before making its final decision.

The court also notes that even if it were to accept the intervenors' "majority rule" theory, the court is far from confident that the intervenors have accurately measured the consensus opinion of black parents with children in the DCSS. The court has difficulty with the survey methodology employed in gathering the information for the so called "Ross Poll," upon which the intervenors rely. Many of the questions posed were worded in a manner that suggested the desired answer, and the accuracy of the final statistics was never established to the court's satisfaction.[13] In the court's opinion, the only value of the Ross Poll is that it indicates that a substantial portion of the class is more adamantly opposed to mandatory busing than the plaintiffs.

Accordingly, the court holds that the intervenors should not be substituted at this time for the plaintiffs as class representatives.

2. Intervention

In the alternative to substitution of the current class representatives, the intervenors argue that they should be permitted to intervene in this suit pursuant to Rule 24 (a) (2) of the Federal Rules of Civil Procedure. This rule provides that:

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[13] In his testimony, Mr. Ross claimed that he possessed no knowledge of the statistical aspect of the poll, and indicated that his statistician would later testify in that regard. The court notes, however, that the statistician was never called as a witness.

> Upon timely application anyone shall be permitted to intervene . . . when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicants ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Fed. R. Civ. P. 24 (a) (2) . As noted previously, the intervenors claim that they possess an interest in this litigation that the plaintiffs do not adequately represent. They likewise claim, as they must, that the disposition of the captioned case in their absence may impair their ability to protect their interests. Consequently, the intervenors argue that they are entitled to intervention as a matter of right.

In *Hines v. Rapides Parish School Board*, 479 F.2d 762 (5th Cir. 1973), the Fifth Circuit[14] stated that the proper course for parent groups to pursue in presenting complaints with regard to school desegregation litigation is a petition for intervention. The court went on to indicate that such a petition

> [will] bring to the attention of the district court the precise issues that the new group [seeks] to represent and the ways in which the goal of a unitary system [have] allegedly been frustrated. . . .

[14] All decisions handed down by the Fifth Circuit prior to the close of business on September 30, 1981 constitute binding precedent in the Eleventh Circuit. *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981).

> If the court determine[s] that the issues that the [proposed intervenors seek] to present [have] been previously determined or if it finds that the parties in the original action are aware of these issues and completely competent to represent the interests of the [proposed intervenors], it [can] deny intervention. If the court [feels] that the new group [has] a significant claim which it could best represent, intervention [will] be allowed.

Id. at 765. Significantly, the court did not state whether it was referring to intervention as a matter of right or permissive intervention.

In *Jones v. Caddo Parish School Board*, 499 F.2d 914 (5th cir. 1974), however, the Fifth Circuit clearly indicated that under certain circumstances, intervention as a matter of right is appropriate in school desegregation cases. In this case, a group of black individuals moved to intervene because of their dissatisfaction with a proposed desegregation plan that the parties plaintiff apparently were prepared to accept. The Fifth Circuit did not address the substance of the motion because it found that the district court had erred in failing to conduct an evidentiary hearing. The court did state, however, that on remand,

> "[i]f it should be found in fact that [the proposed intervenors] represent a class of black citizens of Caddo Parish whose constitutional rights are not properly protected by plaintiffs, they should be authorized to intervene as *a matter of right*, and to present evidence in support of their contentions.

Id. at 918 (citing Fed. R. Civ. P. 24) (emphasis added).

Hence, the former Fifth Circuit, and thus the Eleventh Circuit as well, clearly have authorized intervention as a matter of right in class action suits involving school desegregation when the appropriate circumstances are present. The plaintiffs, nevertheless, contend that intervention by parents in school desegregation cases is not a matter of right, but rather, if allowed at all, is permissive. They cite numerous cases in support of this proposition; however, the court finds that these cases either do not stand for the plaintiffs' proposition or else are inapposite to the intervenors' situation.

In *St. Helena Parish School Board v. Hall*, 287 F.2d 376 (5th Cir.) , *cert. denied*, 368 U.S. 830 (1961) , for example, the Fifth Circuit did not hold that intervention in school desegregation cases is not a matter of right. Rather, the court simply held that the proposed intervenor, a white student by his parents, was properly denied the right to intervene by the trial court because he failed to show that "the representation of his interest in the litigation was or might be inadequate." *Id.* at 379. All that this case establishes, therefore, is that a "patron" of a school system does not have an *absolute* right to intervene in a school desegregation case by sole virtue of the fact that he is such a "patron" — he must also meet the requirements of Rule 24(a).[15]

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[15] *But see Stell v. Savannah-Chatham County Board of Education*, 333 F.2d 55 (5th Cir.), *cert. denied*, 379 U.S. 933 (1964). In this case, the court interpreted *St. Helena* to mean that "intervention in school desegregation cases is not a matter of right but of discretion upon good cause being shown." *Id.* at 60. Admittedly, this statement can be read to support the plaintiffs' position in the captioned case. This court is of the opinion, however, that in using the phrase "a matter of right," the

Another case upon which the plaintiffs rely, *Valley v. Rapides Parish School Board*, 646 F.2d 925 (5th Cir. 1981), likewise does not establish that there is no intervention as a matter of right in school desegregation cases. In this case, the Fifth Circuit held that the movants for intervention were not entitled to intervene as a matter of right because they sought to oppose the desegregation plan, and as such, failed to demonstrate the required interest in a desegregated school system. *See id.* at 941; *see also United States v. Perry County Board of Education*, 567 F.2d 277, 279 (5th Cir. 1978) ("parents seeking to intervene [in school desegregation cases] must demonstrate an interest in a desegregated school system"). Although the intervenors in the captioned case possess different theories from the plaintiffs with regard to how desegregation should be achieved, it cannot seriously be argued that they have failed to demonstrate the necessary interest in a desegregated school system.

In *Pate v. Dade County School Board*, 588 F.2d 501, 503 (5th Cir.), *cert. denied*, 444 U.S. 835 (1979), the movants for intervention argued "that parents of school children [had] an interest in the [desegregation] litigation and that the failure of the school board to appeal demonstrate[d] that such interest was not being adequately represented." Although the court rejected this argument, it is again obvious that what the court actually rejected was the recognition of a blanket right to intervene solely because of one's status as a parent. The movants in this case, as in *Valley v. Rapides Parish School Board*, simply did

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court was not referring to technical "intervention of right" as provided in Rule 24(a), but rather the so-called "absolute" right to intervene that the movant in *St. Helena* sought to have that court recognize.

not meet the requirements for intervention of right as provided for in Rule 24 (a), and, therefore, were denied intervention as a matter of right.[16] The intervenors in the captioned case have shown, to the court's satisfaction, that they meet the requirements of Rule 24(a)(2), and that they are not seeking intervention solely on the bases of their position as parents.

Graves v. Walton County Board of Education, 686 F.2d 1135 (5th Cir. Unit B 1982) provides further support for the court's narrow interpretation of the former Fifth Circuit's pronouncements regarding intervention as a matter of right in school desegregation cases. In this case, the court reversed the district court's denial of intervention by a group of parents, and held instead that the parents were entitled to intervention of right under Rule 24 (a) (2). *See id.* at 1140-42 .

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[16] *See also United States v. Perry County Board of Education*, 567 F.2d 277 (5th Cir. 1978) (court found that the movants for intervention failed to demonstrate the necessary "'direct substantial, legally protectable interest in the proceedings'"). In *Adams v. Baldwin County Board of Education*, 628 F.2d 895 (5th Cir. 1980), the court interpreted the holding in *Pate* to mean that "parent groups with complaints growing out of desegregation litigation are [not] entitled to intervention as a matter of right." *Id.* at 897 n.4. As stated, this court does not interpret the type of intervention referred to in *Pate* and other Fifth Circuit cases to be the technical intervention of right sanctioned by Rule 24(a).

The court notes that the plaintiffs also rely on *Davis v. East Baton Rouge Parish School Board*, 721 F.2d 1425 (5th Cir. 1983). This decision has no binding effect in the Eleventh Circuit, however, because it was decided after September 30, 1981. See *Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981).

This court observes that the movants in *Graves* did not argue that they possessed a right to intervene based upon their status as parents. Rather, they simply alleged that based upon their interests in the litigation they were entitled to intervention under Rule 24 (a) or (b); the court of appeals found that they met the requirements of Rule 24 (a) (2) , and accordingly ruled that intervention as a matter of right was appropriate. It is of particular importance, that in reaching its ultimate conclusion, the court of appeals did not even mention the cases relied upon by the plaintiffs in the captioned case.

The court is convinced that the case law in this circuit provides for intervention as a matter of right in school desegregation cases so long as Rule 24(a)'s requirements are satisfied, and the court finds that they have been met in the present litigation. Although the court does not consider the current class representatives to be inadequate per se, it is abundantly clear that they do not adequately represent the interests of the intervenors. The intervenors seek intervention to ensure that the plaintiffs, out of an abundance of cynicism with regard to voluntary methods of desegregation, do not concentrate their efforts on obtaining mandatory busing. As the court has stated, the plaintiffs do possess a rather myopic view of the potential remedies in this case. Such a view may represent the interests of some of the class, but, as the evidence shows, it certainly does not adequately represent the views of many others.

Again, the court is compelled to emphasize that the ultimate issue in this case does not turn on what a particular group wants. Rather, it hinges upon what will best achieve maximum feasible desegregation in the DCSS.

Thus, the presence of varying views in this case is actually an asset to the entire class, for it allows the court to examine all possibilities in endeavoring to reach the most effective resolution.

Accordingly, as the court has found that requirements of Rule 24(a) (2) have been met, the intervenors' motion to intervene is granted .[17]

B. *Joining or Adding Parties*

1. DeKalb Branch

The plaintiffs assert in their motion to add or join parties under Rule 21, that the DeKalb Branch's extensive involvement throughout the pendency of this litigation proves that it has been, for all intents and purposes, a party to this action from its inception. Accordingly, they argue that the court should grant their motion out of hand, as basically a house-keeping gesture. In other words, the plaintiffs claim they are merely requesting that the court formalize that which has been understood for twenty two years. *See* Plaintiffs' Motion to Join or Add Parties, p. 3.

For various reasons, the court finds no merit in the plaintiffs' arguments. First the court notes that they have inappropriately moved to join the DeKalb Branch under Rule 21. That rule, as its heading indicates, is reserved for correcting the "Misjoinder and Non-Joinder of Parties." Fed. R. Civ. P. 21. Rule 21, in essence, provides a mechanism for ensuring that the proper parties are before the

[17] Because the court has granted the intervenors motion to intervene, their alternative request for the creation of a sub-class is now moot, and is therefore denied.

court in a given case. See *Graves v. Walton County Board of Education*, 686 F.2d 1135, 1137 (5th Cir. Unit B 1982) (allowing addition of parties pursuant to Rule 21 to keep case alive after claims of original named plaintiffs were rendered moot). It is not a vehicle for adding unnecessary individuals or entities, solely to "formalize" so-called pre-existing relationships. If this were the case, there would be no end to the number of parties who could be dropped or added to a lawsuit. The court finds absolutely no reason to join the DeKalb Branch under Rule 21; its presence as a party is wholly non-essential, and complete relief can certainly be provided in its absence.

The court further finds that the plaintiffs, instead of moving for joinder under Rule 21, should have permitted the DeKalb Branch to move for intervention pursuant to Rule 24. However, as *Hines v. Rapides*, establishes, intervention is the appropriate vehicle for allowing groups to "question . . . deficiencies in the implementation of desegregation orders . . . ." 479 F.2d at 765. Stated another way, intervention is appropriate when one has an interest to protect that is not already being protected. The DeKalb Branch does not meet this requirement. It seeks only to add its voice to that of the plaintiffs. It has not argued that the current class representation is inadequate or that it has any specific interests that are not presently being advocated. Indeed, the evidence clearly shows that the DeKalb Branch only wishes to assert that which the plaintiffs are currently asserting. Hence, the court finds that any interest that the DeKalb Branch may have in this litigation is adequately represented by the plaintiffs. Accordingly, even if the DeKalb Branch had

moved for intervention under Rule 24, such a motion would have been denied.[18]

Finally, the court notes that even if it could meet the requirements for being added as a party, the DeKalb Branch still would not qualify because it lacks standing. First, the DeKalb Branch clearly has no standing in its own right — it is not a member of the class and it cannot show injury to itself as an entity. *See Warth v. Seldin*, 422 U.S. 490, 511 (1975) (holding that an association may have

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[18] In addition, the court notes that the DeKalb Branch clearly cannot meet the timeliness requirement of Rule 24. In *Stallworth v. Monsanto Co.*, 558 F.2d 257 (5th Cir. 1977), the former Fifth Circuit articulated the test for timeliness under Rule 24. That court mandated that in passing upon a petition to intervene, a district court must consider the following four factors: (1) "[t]he length of time during which the would-be intervenor actually knew or reasonably should have known of his interest in the case before he petitioned for leave to intervene"; (2) "[t]he extent of the prejudice that the existing parties to the litigation may suffer as a result of the would-be intervenor's failure to apply for intervention as soon as he actually knew or reasonably should have known of his interest in the case"; (3) "[t]he extent of the prejudice that the would-be intervenor may suffer if his petition for leave to intervene is denied"; and (4) "[t]he existence of unusual circumstances militating either for or against a determination that the application is timely." *Id.* at 264-66.

As admitted by the plaintiffs, the DeKalb Branch has played an integral role in this litigation from the beginning, and hence, clearly has long possessed knowledge of any interest that it may have in this case. In addition, as stated, the interest that the DeKalb Branch desires to represent is currently being adequately represented by the plaintiffs. Consequently, it will suffer no prejudice by virtue of the fact that it cannot intervene in this action. Finally, the DeKalb Branch has offered no legitimate excuse for its tardy attempt to be added to this case, and to allow its addition at this late date would undoubtedly cause prejudice to the existing parties.

standing in its own right to seek judicial relief from injury to itself, and may therewith assert rights of members, so long as those rights relate to associational ties); *see also Schlesinger v. Reservists to Stop the War*, 418 U.S. 208, 220-21 (1974) (noting the indispensability of the concrete injury requirement). Secondly, the DeKalb Branch cannot overcome its lack of individual standing by arguing that as an association, it possesses standing to sue solely as the representative of its members. *See Warth*, 422 U.S. at 511; *NAACP v. Alabama*, 357 U.S. 449 (1958). In *Warth*, the Supreme Court stated that to establish this type of standing,

> [t]he association must allege that its members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justifiable case *had the members themselves brought suit.*

422 U.S. at 511. *See also NAACP v. Alabama*, 357 U.S. at 459; *Barrows v. Jackson*, 346 U.S. 249, 255-59 (1953). This court finds that recognition of such standing is only appropriate when the individuals to be "represented" are not representing or cannot personally represent their own interests. This obviously in not the case in the captioned litigation.

Accordingly, as the court finds that the DeKalb Branch cannot become a party either under Rule 21 or Rule 24, and that it possesses no standing, the plaintiffs' motion to join or add the DeKalb Branch in denied.

2. Other Parties

The plaintiffs have also moved to join or add the following individuals: Adesina Scott, Adreana Scott, Ardona Scott, Valencia Mills, Artemis Mills, and Berta Mills. As noted previously, Rule 21 is appropriately invoked to ensure that the correct parties are before the court in a given case. In the captioned suit, as in many desegregation cases, the original named parties have either graduated or somehow become disassociated from this litigation. As a result, the court finds it proper to add "Adesina Scott," "Adreana Scott," "Ardona Scott," and "Valencia Mills," and to remove "Frankie Prather" and "Princess Mills" from the style of this case. In addition, as Berta Mills retains full physical custody and joint legal custody of Valencia Mills, it is only proper to add her name to the case.

The court finds it inappropriate, however, to add Artemis Mills as he is presently only three years old and admittedly not enrolled in the DCSS. Thus, he is not a member of the class at this time, and therefore cannot be added as a party.

Accordingly, the plaintiffs' motion to join or add these additional parties is granted in part and denied in part.

C. *Class Definition*

As originally certified, the class in this case was all black children enrolled in the DCSS and their black parents. Such a definition fails to acknowledge the fact, however, that not all black children enrolled in the DCSS have *black* parents. In addition, some of these children may be in the custody of a legal guardian as opposed to a

"parent." This court believes that any adult who has legal custody of a black child who is enrolled in the DCSS has an interest in this litigation, and of course should be recognized as a member of the class. Accordingly, the class definition is hereby altered to include "all black children enrolled in the DCSS and their parents or legal guardians."

D. *Temporary Restraining Order*

On December 7, 1990, the plaintiffs filed a motion for a temporary restraining order seeking to enjoin the defendants from:

> (1) spending any funds or committing to any construction contracts under the 1989 school bond issue; [and] (2) proceeding with or implementing any plans with respect to the implementation of any new junior high schools.

Plaintiffs' Motion for a Temporary Restraining Order, p. 1. In addition, the plaintiffs requested that the court hold a hearing at which the defendants must show cause why they "should not be held in contempt for violating their commitment . . . to refrain from committing any new dollars or letting any new contracts under the 1989 school bond issue." *Id.*

The court conducted a telephone conference with counsel for the plaintiffs and defendants on December 13, 1990. After listening to the arguments and explanations from each side, the court is not convinced that there has been any so called violation of the defendants' "commitment." Accordingly, the plaintiffs' motion for temporary restraining order is denied at this time.

Nevertheless, the court is concerned that the defendants are being less than forthcoming with the plaintiffs. As a result, the court hereby orders that no further funds be allocated or committed by the defendants without prior report to the attorneys for the plaintiffs' and the intervenors, and subsequent approval by this court, unless otherwise ordered. Further, the court directs the parties to meet and confer with one another in an attempt to address the issues that have been raised by the plaintiffs in their most recent motion, as well as their previous motion for a preliminary injunction.[19] The court will take no additional action in this regard unless and until the matter is once again brought before it.

[19] The court notes that this motion also included a request to enforce the mandate of the court of appeals, as well as the orders of this court. In addition, the plaintiffs previously filed a motion to compel discovery, convene a discovery conference, and appoint a monitor to assure the flow of information. These motions all basically involve the same dispute as that raised in the plaintiffs' most recent motion for a temporary restraining order, and should accordingly be addressed by the parties during the conference that the court has directed them to conduct.

Conclusion

For the reasons set forth, the intervenors' motion to intervene is granted; the plaintiffs' motion to join or add parties is denied with respect to the DeKalb Branch and Artemis Mills, but granted as to Adesina Scott, Adreana Scott, Ardona Scott, Valencia Mills, and Berta Mills; and the class is redefined to include "all black children enrolled in the DCSS and their parents or legal guardians."

IT IS SO ORDERED this 19th day of December, 1990.

WILLIAM C. O'KELLEY
Chief United States District Judge

Supreme Court, U.S.
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MAY 1 1991
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(12)

No. 89-1290

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1990

ROBERT R. FREEMAN, ET AL.,

Petitioners,

v.

WILLIE EUGENE PITTS, ET AL.,

Respondents.

On Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

BRIEF OF INTERVENORS IN *CARLIN V. BOARD OF EDUCATION SAN DIEGO UNIFIED SCHOOL DISTRICT* AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTEREST OF *AMICI CURIAE* 1

SUMMARY OF ARGUMENT 3

ARGUMENT

I. BACKGROUND: DESEGREGATION CASES ARE UNIQUE 5

A. *Amici Curiae's* Presentation is Appropriate 5

B. History leading to *Swann* Doctrine 6

C. The *Swann* Doctrine Limits Judicially-Ordered Busing 8

II. THE PANEL ORDER TO REASSIGN DeKALB COUNTY STUDENTS ON A RACIAL BASIS IS UNCONSTITUTIONAL 11

A. The Order to Remedy *De Facto* "Segregation" Violates the Separation of Powers Doctrine 13

B. The Order Subjects Adversely-Affected Students to Loss of Their Constitutional Rights in Violation of the Due Process Clause 15

CONCLUSION 20

APPENDIX 1A

TABLE OF AUTHORITIES

Cases: Page

American Fed. of Labor v. American Sash & Door Co., 335 U.S. 538 (1949) 14
Austin Independent School District v. United States, 429 U.S. 990 (1976) 17
Board of Ed., Etc. v. Superior Court of Cal., 448 U.S. 1343 (1980) 18
Board of Education of Oklahoma City Public Schools v. Dowell, 111 S.Ct. 630 (1991) 19
Bob Jones University v. United States, 456 U.S. 922 (1982) 19
Bob Jones University v. United States, 461 U.S. 574 (1983) 5,6,17
Bolling v. Sharpe, 347 U.S. 497 (1954) . . 17
Brown v. Board of Education, 347 U.S. 483 (1954) *(Brown I)* 7
Brown v. Board of Education, 349 U.S. 294 (1955)*(Brown II)* 8
Carlin v. Board of Education, No. 303,800 Superior Court, San Diego County, California 1-3
Crawford v. Board of Education, 17 Cal.3d 280 (1976) 6
Crawford v. Board of Education, 458 U.S. 527 (1982) 2
Goss v. Lopez, 419 U.S. 565 (1975) 18
Green v. County School Board, 391 U.S. 430 (1968) 8,9,16
I.N.S. v. Chadha, 462 U.S. 919 (1983) . . . 13,15
Jackson v. Pasadena City School District, 59 Cal.2d 876 (1963) 6
Johnson v. San Francisco Unified School District, 500 F.2d 349 (9th Cir. 1974) . . . 19
Keyes v. School District No. 1, Denver, Colo., 413 U.S. 189 (1972) 8,16,17
Marbury v. Madison, 5 U.S. 137 (1803) . . 14
Martin v. Wilks, 109 S.Ct. 2180 (1989) . . . 19
Pitts by Pitts v. Freeman, 887 F.2d 1438 (11th Cir. 1989) . . . . . *passim*
Plessy v. Ferguson, 163 U.S. 537 (1896) . . 6

TABLE OF AUTHORITIES--Continued

Cases: Page

Regents of University of California v. Bakke, 438 U.S. 265 (1978) 11,19
Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971) . . . . . *passim*
United States v. Butler, 297 U.S. 1 (1936) . . 17

Constitutional Provisions:

California Constitution, Art. I, Sec. 7A . . . 2,6
Massachusetts Constitution of 1780 13
United States Constitution
Amendment V, Due Process Clause . 4,19
Amendment XIV, Equal Protection Clause 7

Statutory Provisions:

Rule 24(a)2), F.R.Civ.Proc. 19

Other Authorities:

Coleman, *A Scholar Who Inspired It Says Busing Backfired*, (Interview, The National Observer, June 27, 1975) 19
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Note, 51 Cal.L.Rev. 810 (1963) 6
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BRIEF OF INTERVENORS
IN *CARLIN V. BOARD OF EDUCATION*
AS *AMICI CURIAE*
IN SUPPORT OF PETITIONERS

FOR REVERSAL

INTEREST OF *AMICI CURIAE**

Amici Curiae are Intervenors--opposing mandatory racial assignments--in the school desegregation case entitled *Carlin, et al.*, Plaintiffs, *v. Board of Education, San Diego Unified School District,* Defendant; *Groundswell, et al.*, Intervenors, No. 303800, Superior Court, San Diego County, California. This Court may take judicial notice of proceedings in the "Carlin" case.

The *Carlin* complaint, based upon *stare decisis* application of judicial decisions, was filed December 4, 1967, as a class action by certain black students, among others, versus the Defendant Board of Education to "integrat ' the San Diego Unified School District. The Order Determining Existence of Class Action, filed December 7, 1973, described the class as--

> "All students attending the San Diego Unified School District and their parents and legal guardians who believe that said schools should be racially balanced, if necessary through court order."

On October 21, 1980, a busing plan was proposed to the Defendant Board (Appendix, p.2A). *Amici*--including an association of persons called "Groundswell," and some individual students and their parents--intervened on December 15, 1980. They alleged in their complaint in intervention (pp. 8-10) that it was unconstitutional to assign the six intervening students and other students similarly situated, because of their race, to particular schools.

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*This brief is filed with the consent of the parties; letters consenting to the filing of this brief have been lodged with the Clerk.

Amici later offered proof of signed petitions by 1856 District students, each "object(ing) to school authorities making me, because of my race, go away from my neighborhood public school location to classes, without my consent and the consent of my parents, as a violation of my rights." Their existence was established and an excerpt from an exemplar, marked as a part of *Carlin* Intervenors' Exhibit 6 for Identification only, is annexed as Appendix A. Excerpts from said Exhibit 6 and *Carlin* reporter's transcript of procedings, dated July 16, 1981, are annexed as Appendix B.

In 1982, an amendment to the California Constitution, Section 7A, Article I, in effect prohibiting California courts from issuing busing orders without the basis required by this Court, was upheld in *Crawford v. Los Angeles Board of Education,* 458 U.S. 527.

Although the *Carlin* Court has filed an "Order re Integration Plan/Final Order" on May 21, 1985, which permits neighborhood school assignments, it has retained continuing jurisdiction (p.12). Thus, those having the status of *Amici* students remain subject to renewal of the contention that racial imbalance through causes not attributable to them call for their being racially reassigned beyond their neighborhood schools.

Here, the DSCC has complied with desegregation orders since June 12, 1969, as to student assignments under a neighborhood plan, to the satisfaction of the district court, which on June 30, 1988, dismissed the DSCC from court supervision as to such assignments. See history in *Pitts by Pitts v. Freeman.* 887 F.2d 1438, 1444 (11th Cir. 1989). Upon appeal from that ruling, the Court of Appeals panel ordered that the DCSS and the district court "must consider busing--regardless of whether the plaintiffs support such a proposal." Id. at 1450.

Amici submit that the present racial imbalance cited by the panel (Id. at 1441) in some schools of the DSCC, which the panel terms "segregation" notwithstanding free transfer provisions, is caused by population changes (see Id. at 1442) and not by any discriminatory action by the DSCC, particularly since June, 1969. Therefore, the panel busing order lacks the

basis required by *Swann v. Charlotte-Mecklenburg Board of Education,* 402 U.S. 1, 28 (1971).

Amici have a strong interest in seeing that a busing order based upon what is at most *de facto* "segregation" is not issued, which could be used as a precedent elsewhere to racially reassign voiceless students after they have been able to attend their neighborhood schools for years.

SUMMARY OF ARGUMENT

The DeKalb County School System (DCSS) in Georgia has been operating under the direction of the district court since June 12, 1969, in this school desegregation case brought earlier by a black plaintiff class. At that time the trial court, among other things, enjoined the defendant DCSS from discriminating on the basis of race, and ordered the DCSS to close all remaining de jure black schools and to establish a neighborhood school attendance policy. *Pitts by Pitts,* supra, 887 F.2d at 1443.

DCSS then "closed all de jure black schools," and, it appears from the litigation history related in the panel decision, established a neighborhood school attendance policy, and a "M to M program." The latter program permits students to transfer from schools in which their race is a majority to schools in which their race is a minority, which was modified in 1976 to provide those students with free transportation. Id. at 1443.

The history relates a series of requests by the parties and orders leading to the reversal in 1985 in "Pitts I, 775 F.2d 1423" by the Eleventh Circuit of a district court conclusion that the DCSS had achieved unitary status. Id. at 1443. More litigation followed, leading to a June 30, 1988, district court decision, from which both parties appealed. Id. at 1444.

The plaintiffs contended to the appellate court panel, among other things, that the "district court erroneously dismissed the DCSS from court supervision in the area of student assignment." The DCSS contended, among other things, that it "satisfied its duties relating to student assignment

when it complied with the district court's 1969 order and closed all de jure black schools." The DCSS "takes the position that it did not 'cause' resegregation and that it possesses no duty to take affirmative action to desegregate." Id. at 1444.

The panel order acknowledges that demographic changes affected the DCSS after 1969. Id. at 1442. It relates (Id. at 1441) the current racial imbalance in the DCSS, which Amici submit was caused by demographic changes and not by the DCSS, which the district court has found has complied with its 1969 order in the area of student assignment. Nevertheless, the panel has issued the following far-reaching order:

> "...The DCSS must consider pairing and clustering of schools, drastic gerrymandering of school zones, and grade reorganization. See *Swann*, 402 U.S. at 27-28... The DCSS and the district court must consider busing--regardless of whether the plaintiffs support such a proposal. The DCSS's neighborhood plan is not inviolable..." Id. at 1450.

By its very wording, the order concedes extensive support by students throughout the DCSS for a neighborhood system, and, by implication, opposition to "forced" busing. The trial court is ordered, without any provision for objecting students to be heard, to fashion a plan to reassign them beyond their neighborhood schools on a racial basis.

Swann, 402 U.S. at 28, states that "(a)bsent a constitutional violation there would be no basis for judicially ordering assignment of students on a racial basis." Demographic changes, and not DSCC actions, after 1969 caused what is at most *de facto* "segregation," which is not a sufficient basis for the busing order.

The order to racially bus students is, therefore, of a legislative nature beyond the panel's authority. It also fails to provide for hearing the objections of students upon whom it now focuses. Thus, it is in violation of the separation of powers and the due process provisions of the United States Constitution.

ARGUMENT

I. BACKGROUND: DESEGREGATION CASES ARE UNIQUE

A United States Court of Appeals three-judge panel for the Eleventh Circuit has ruled:

> "(T)hat a school system does not achieve unitary status until it maintains at least three years of racial equality in six categories: student assignment, faculty, staff, transportation, extracurricular activities, and facilities. The DCSS has not achieved unitary status. We affirm the district court's conclusion that the DCSS failed to fulfill its duties in the areas of faculty and staff. We reverse the district court's conclusion that the DCSS fulfilled its duties in the area of student assignment. Accordingly, we order the district court to require the DCSS to prepare and file a plan in accordance with this opinion in the shortest reasonable time." *Pitts by Pitts*, supra, 887 F.2d at 1450.

To meet the terms of the panel order, *Amici* believe the trial court will have to order the petitioning school authorities to indefinitely reassign nonconsenting students, solely on a racial basis, beyond their neighborhood schools to achieve an unspecified racial balance in the schools satisfactory to the appellate panel. The basis required by *Swann* for such an order has not been shown.

A. Amici Curiae's Presentation is Appropriate

The affirmative relief ordered by the panel adversely affects nonconsenting students in the DCSS, and, by virtue of the *stare decisis* doctrine, others like the "anti-busing" students in San Diego. *Amici's* presentation is in the tradition of those in cases having serious implications for nonparties. Compare *amicus* presentation in *Bob Jones University v. United States*, 461 U.S. 574 (1983).

Contentions by *amici curiae*, with implications for nonparty students, have been considered in desegregation cases.

A key pronouncement in the seminal California case of *Jackson v. Pasadena City School Dist.*, 59 Cal.2d 876, at 881, rendered June 27, 1963, pertained to school district responsibility for affirmative integration in schools other than the defendant Pasadena district:

> "The right to an equal opportunity for education and the harmful consequences of segregation require that school boards take steps, insofar as reasonably feasible, to alleviate racial imbalance in schools regardless of its cause."

Footnote 5 in Note, 51 Cal.L.Rev. 810 (1963) points out that the complaint in *Jackson,* supra, --

> "was drawn on the theory of affirmative segregation and in the intermediate appellate court, counsel for plaintiff expressly denied that he was advocating affirmative integration. 210 A.C.A. at 658, 16 Cal.Rptr. at 665. The question was not argued in the briefs of either party. Affirmative integration was urged, however, in two *amici curiae* briefs."

This dictum, under the *stare decisis* doctrine, became the basis of the decision in 1976 in *Crawford v. Board of Education*, 17 Cal.3d 280, which decreed affirmative integration (which continues in effect except as to "busing") in California without the showing of *de jure* segregation required by federal decisions. The "busing" authorized by *Crawford* was disallowed by the 1979 "anti-busing" amendment to Section 7A, Article I, of the California Constitution, ultimately upheld in *Crawford,* supra, 458 U.S. 527 (1982).

Amici's contentions, like those of the *amici* in *Jackson* and *Bob Jones University*, supra, may be entertained favorably.

B. History Leading to the *Swann* Doctrine

In 1896, the United States Supreme Court held in *Plessy v. Ferguson*, 163 U.S. 537, that the segregation of the races in transportation facilities did not violate the Constitution so long as

the facilities were equal. The majority opinion rationalized that any discrimination felt by black persons assigned to separate facilities, since they were equal to those used by whites, was "not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it." 163 U.S. at 551.

Justice John Marshall Harlan (I) vigorously dissented, and his rationale is summarized by Professor Bernard Schwartz in *The Supreme Court* (Ronald Press, 1957) at page 269:

> "Yet, even if the *Plessy* Court were correct in its assumption that segregation is not discrimination, that would not make its doctrine consistent with the equal protection clause. For that clause bars the states from making legal distinctions that are not supported by reasonable legislative classifications, and, as already emphasized, classification on the basis of race must be deemed irrational. Our Constitution, to use the apt description of the dissenting Justice in the Plessy case, is color-blind; it neither knows nor tolerates classification on racial grounds."

Plessy was overruled in 1954 when *Brown v. Board of Education (Brown I)* , 347 U.S. 483, 495, declared that "in the field of public education the doctrine of 'separate but equal' has no place," and that by forcing the black plaintiffs to attend separate schools solely because of their race, the respondents denied them equal protection of the laws under the Fourteenth Amendment to the Constitution. In *Brown I*, the Court was considering the complaints of black children that they were discriminated against by being segregated solely because of their race in separate public schools administered by the respondent school authorities under the laws of Kansas, South Carolina, Virginia and Delaware, respectively.

Brown I agreed with Justice Harlan I as to the unconstitutionality of such actions under state laws permitting or mandating them. However, it did not mention the Harlan dissent and tended to focus upon their effect (segregation) rather than the acts of discrimination. *Brown I* was initially

construed as negative in nature, calling only for state neutrality, as explained by Justice Lewis F. Powell, Jr., in his concurrence in *Keyes v. School District No. 1, Denver, Colo.*, (1972) 413 U.S. 189 at 220:

> "It was impermissible under the Constitution for the States, or their instrumentalities to force children to attend segregated schools. The forbidden action was *de jure*, and the opinion in *Brown I* was construed--for some years and by many courts--as requiring only state neutrality, allowing 'freedom of choice' as to schools to be attended so long as the State itself assured that the choice was genuinely free of official restraint."

Justice Powell goes on to say in *Keyes* that the doctrine of *Brown I*, as amplified by *Brown v. Board of Education*, 349 U.S. 294 (1955) *(Brown II)*, did not retain its original meaning:

> "In a series of decisions extending from 1954 to 1971 the concept of state neutrality was transformed into the present constitutional doctrine requiring affirmative state action to desegregate school systems. The keystone case was *Green v. County School Board*, 391 U.S. 430, 437-438... (1968), where school boards were declared to have 'the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch.'" 413 U.S. 220.

Thus, Justice Powell explained, the affirmative-duty concept articulated in a rural setting in *Green* flowered in *Swann v. Charlotte-Mecklenburg Board of Education*, supra, into a new constitutional principle of general application to large urban areas as well.

C. The *Swann* Doctrine Limits Judicially-Ordered Busing

A truism in the American system of justice is that it is delegated to the counsel of the parties the task of shaping the

issues which are brought before the appellate courts. Edward M. Wright, *Witkin on Appellate Court Attorneys*, 54 Cal.St.Bar Journal 106 (1979).

The issues were shaped in *Brown, Green* and *Swann*--relied on for judicially-ordered busing of bystanders--by the counsel for the only parties to those actions, namely, the minority plaintiffs versus the defendant school authorities.

In *Swann*, a desegregation plan had been approved for a large urban district by the District Court in 1965 based on geographic zoning with a free transfer provision, leaving some schools racially imbalanced. 402 U.S. at 6,7 (1971).

After the decisions in *Green* and companion cases, the *Swann* plaintiffs moved in September, 1968, for further relief based on those cases. The District Court then in effect required a plan desegregating all the schools, including the elementary schools, to be accomplished by busing students beyond their neighborhood schools so that the student bodies throughout the system would range from 9% to 38% black. Id. at 7-11.

This Court noted that **all the parties agreed** (emphasis by *Amici)* that "in 1969 the system fell short of achieving the unitary system that those (*Green* and companion) cases require;" but that the board..."reiterated its view that the plan was unreasonable." Id. at 7,11.

Dealing with the facts and issue thus presented to it, this Court stated:

> **"On the facts of this case,** we are unable to conclude that the order of the District Court is not reasonable, feasible and workable..." Emphasis supplied. Id. at 31.

However, the Court also indicated the temporary nature of the judicial role.

> "At some point, these school authorities and others like them should have achieved full compliance with this

Court's decision in *Brown I*. The systems will then be 'unitary' in the sense required by our decisions in *Green* and *Alexander*.

> "It does not follow that the communities served by such systems will remain demographically stable, for in a growing, mobile society, few will do so. Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system. This does not mean that federal courts are without power to deal with future problems; but in the absence of a showing that either the school authorities or some other agency of the State has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools, further intervention by a district court should not be necessary." Id. at 31,32.

When this Court was considering the reasonableness of the *Swann* plan the whites were a majority of 71% in the Charlotte school system. 402 U.S. at 6. In the DCSS black students are an emerging majority, which as reported in the decision below, 887 F.2d at 1441, was 47% of the DCSS population in September, 1986, and reportedly had reached 57% at the time of a report on the case by The Los Angeles Daily Journal on February 20, 1991, p.4.

The absence of "anti-busing" students as parties in *Swann* individually objecting to being racially bused from their neighborhood schools led to a lack of reference to that contention in considering the board's claim the busing plan was unreasonable.

> "An objection to transportation of students may have validity when the time or distance of travel is so great as to either risk the health of the children or significantly impinge on the educational process... It hardly needs stating that the limits on time of travel will vary with many factors, but probably with none more

> than the age of the students. The reconciliation of competing values in a desegregation case is, of course, a difficult task with many sensitive facets but fundamentally no more so than remedial measures courts of equity have traditionally employed." *Swann*, supra, 402 U.S. at 30,31.

By this reference to the children affected by the order, the *Swann* Court indicated that the interests of such students are not precluded from consideration in some appropriate manner.

II. THE PANEL ORDER TO REASSIGN DeKALB COUNTY STUDENTS ON A RACIAL BASIS IS UNCONSTITUTIONAL

The panel relies upon *Swann*, supra. 402 U.S. at 27-28, as its authority for racially reassigning students to "attain racial equality" in the category of student assignments for a period of at least three years. 887 F.2d at 1450.

But *Swann* also held:

> "Absent a constitutional violation there would be no basis for judicially ordering assignment of students on a racial basis. All things being equal, with no history of discrimination, it might well be desirable to assign pupils nearest their homes." 402 U.S. at 28.

No constitutional violation by a school board arises when the racial "imbalance" in its district, under the relevant facts and history, is *de facto* in nature, such as that arising from demographic changes not attributable to discriminatory acts by the school board. And, as Justice Powell has described it, the constitutional violation must be clearly determined before remedies, not permitted to exceed the extent of the violation, will be considered. *Regents of University of California v Bakke*, 438 U.S. 265, 300 (1978). The *Swann* Court found a constitutional violation under the facts and history before it. But the facts and history in this case since the June 12, 1969, district court desegregation order do not, in *Amici's* opinion, clearly determine a "constitutional violation." Without it, the panel lacks the necessary basis upon which to rest its order overriding

both the school board and district court, and ordering busing.

The panel order relates the numerous affirmative desegregative actions taken snce 1969 by the school board under the direction of the district court. These included the closing of "all remaining de jure black schools," establishing a neighborhood school attendance policy, and a "M to M program." The latter program permits students to transfer from schools in which their race is a majority to schools in which their race is a minority, which was modified in 1976 to provide those students with free transportation. *Pitts by Pitts,* supra, 887 F.2d at 1443.

The panel order points out that black students constituted 47% of the DCSS population in September, 1986; at which time 50% attended schools with black populations of more than 90%, while 27% of the white students attended schools with white populations of more than 90%. Id. at 1441. It then relates demographic changes in the DCSS occurring after 1969:

> "For example, between 1970 and 1980, north DeKalb County's non-white population increased 102-percent to 15,365. South DeKalb County's non-white population, however, increased 661-percent to 87,583. In addition, between 1975 and 1980, 37,000 white residents moved from south DeKalb County to neighboring counties.
>
> "DeKalb County's demographic changes affected the DCSS. Between 1976-1986, the DCSS elementary school population declined 15-percent. During the same time, however, black elementary student enrollment increased 86-percent. At the high school level, DCSS enrollment declined 16-percent, while black enrollment increased 119-percent." Id. at 1442.

The panel order does not relate any discriminatory actions by the school board after June 12, 1969, causing the racial imbalance in the schools related above. Thus, it may be fairly argued from the facts related in the order that the racial ratios in those schools are due to population changes and not attributable

to relevant actions by the school board.

The panel thus lacks authority, under *Swann*, to order busing in the DCSS where the existing "segregation" of "minority" students, who are becoming a majority group, free to transfer from their neighborhood schools to advance integration, is *de facto* in nature.

A. The Order to Remedy De Facto "Segregation" Violates the Separation of Powers Doctrine.

One of the most quoted sources of the separation of powers design of the Constitution is the 1780 Massachusetts Constitution, which includes this classic command:

> "In the government of this commonwealth the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them--to the end that it may be a government of laws and not of men."

The reason for the division of the governing powers was stated by James Madison in *The Federalist No. 47,* recently quoted by Justice Powell in concurring in *I.N.S. v. Chadha,* 462 U.S. 919 (1983), in which the doctrine was invoked:

> "The accumulation of all powers, legislative, executive and judiciary in the same hands, whether of one, a few or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny." Id. at 960.

The nature and extent of the judicial power of the United States, under the proposed Constitution, greatly concerned the Anti-Federalists. A person, calling himself Brutus and thought to have been Robert Yates, in a letter dated January 31, 1788, stated he believed that the powers granted the judicial department "will operate to a total subversion of the state judiciaries, if not, to the legislative authority of the states." He concluded:

> "When the courts will have a precedent before them of a court which extended its jurisdiction in opposition to an act of the legislature, is it not to be expected that they will extend theirs, especially when there is nothing in the constitution expressly against it? and they are authorised to construe its meaning, and are not under any controul?
>
> "This power in the judicial, will enable them to mould the government, into almost any shape they please..." *The American Constitution: For and Against*, J. R. Pole, pp. 58,63, (Hill and Wang, 1987).

Alexander Hamilton conceded in Federalist No. 78 that if the judges "should be disposed to exercise WILL instead of JUDGMENT the consequence would equally be the substitution of their pleasure to that of the legislative body." The Federalist, (B.F.Wright, Ed.1961), p.493. He assured skeptics this would not happen because, under the proposed constitution, the judiciary "has no influence over either the sword of the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment." Id. at 490.

Justice Felix Frankfurter noted the limited extent of federal judicial power, in a concurrence in 1949 in *American Fed. of Labor v. American Sash & Door Co.*, 335 U.S. 538 at 557:

> "(T)he Court is without power to shape measures for dealing with the problems of society but has merely the power of negation over measures shaped by others."

The power of the federal judiciary to negate measures of others, of course, has been exercised by virtue of this Court's holding that the power to interpret the Constitution resides with it. *Marbury v. Madison*, 5 U.S. 137 (1803).

Justice Frankfurter prefaced his above statement by urging restraint in the exercise of that power:

> "In the day-to-day working of our democracy it is vital that the power of the non-democratic organ of our Government be exercised with rigorous self-restraint... As history amply proves, the judiciary is prone to misconceive the public good by confounding private notions with constitutional requirements, and such misconceptions are not subject to legitimate displacement by the will of the people except at too slow a pace." *American Fed. of Labor*, supra, 335 U.S. at 555-556.

Chief Justice Warren E. Burger reiterated in *Chadha*, supra, 462 U.S. at 951, that "(t)he Constitution sought to divide the delegated powers of the new federal government into three defined categories, Legislative, Executive and Judicial, to assure, as nearly as possible, that each Branch of government would confine itself to its assigned responsibility." He added that "(t)he hydraulic pressure inherent within each of the separate Branches to exceed the outer limits of its power, even to accomplish desirable objectives, must be resisted."

This doctrine underlies, *Amici* submit, Chief Justice Burger's statement in *Swann* to the effect that there is no basis for ordering assignment of students on a racial basis to remedy *de facto* "segregation." Thus, the panel exceeds the outer limits of its power in ordering busing to remedy what, under the relevant facts and history, is at most *de facto* "segregation" in DeKalb County public schools.

B. The Order Subjects Adversely-Affected Students to Loss of Their Constitutional Rights in Violation of the Due Process Clause

In concluding that the DCSS "failed to fulfill its constitutional duties regarding student assignment," the panel makes an order which will require extensive mandatory busing. It concedes that to comply, "the DCSS's actions may be administratively awkward, inconvenient, and even bizarre in some situations and may impose burdens on some." *Pitts by Pitts*, supra, 887 F.2d at 1450.

Notwithstanding findings of the District Court, the

position of the DCSS and, by implication, the position of plaintiffs regarding neighborhood schools, the panel orders that "(t)he DCSS and the district court must consider busing--regardless of whether the plaintiffs support such a proposal. The DCSS's neighborhood plan is not inviolable." Id. at 1450.

This order implies, supported by the demographics cited in the record, that many DCSS students, including some "minority" students, support a neighborhood plan. Notwithstanding, these students are to be subjected to assignment on a racial basis to maintain unspecified racial ratios in DCSS schools for at least three years. And busing may be extended as long thereafter as it takes the DCSS to satisfy the appellate panel that the student assignment category and five other categories in the system have achieved "unitary" status. Id. at 1449,50.

This extension of power of the panel over DCSS schools verifies the concern which Chief Justice (then-Justice) William H. Rehnquist expressed in dissent in *Keyes,* supra, 413 U.S. at 189:

> "The drastic extension of *Brown* which *Green* represented was barely, if at all, explicated in the latter opinion."

One of the implications which could have been considered at the time was that the introduction of judicial affirmative action would give the federal judiciary power of a legislative nature over the operation of schools. Less foreseeable was the extent to which this power would be exercised, and the extent to which limitations should be placed upon it. For *Green* suggested, in Footnote 6, only a modest use of affirmative action as to the assignment of students, namely, that a unitary, non-racial system could be readily achieved by geographic zoning. In other words, it suggested the assignment of students to their neighborhood schoools. *Green,* supra, 391 U.S. at 442.

By analogy, soon-to-become-Justice Robert H. Jackson, in *The Struggle for Judicial Supremacy* (Knopf, 1941), illustrated how New Deal legislation was endangered by the

device of lawsuits testing the constitutionality of laws without the presence of real parties in interest. He pointed out that this was later remedied by the Judiciary Act of August 24, 1937, which assured participation by the real parties in interest in specially constituted forums for such litigation. Pp. 118-123.

It was during that period that Chief Justice (then-Justice) Harlan F. Stone cautioned in dissent in *United States v. Butler,* 297 U.S. 1,78-79 (1936):

> "(W)hile unconstitutional exercise of power by the executive and legislative branches of the government is subject to judicial restraint, the only check upon our own exercise of power is our own sense of self-restraint."

As Justice Powell concluded in Footnote 7 to his concurring opinion in *Austin Independent School District v. United States,* 429 U.S. 990, at 995 (1976):

> "(A) desegregation decree is unique in that its burden falls not upon the officials or private interests responsible for the offending action but, rather upon innocent children and parents."

The innocent students in DeKalb County to be subjected to racial assignment away from their neighborhood schools without their consent or that of their parents, then, are bearing the "burden on some" referred to in the panel order.

Their interests coming into play at this point include (1) not being racially discriminated against in the course of required attendance in the DCSS public schools, and (2) not suffering deprivation of liberty by reason of that order. Indicative of their importance are the following events. As to the first, this Court has declared there is a national policy against racial discrimination in education. *Bob Jones University,* supra, 461 U.S. at 593. See *Bolling v. Sharpe,* 347 U.S. 497 (1954). As to the second, Justice Powell stated, in concurring, in *Keyes,* supra, 413 U.S. at 247:

> "Any child, white or black, who is compelled to leave his neighborhood and spend significant time each day being

transported to a distant school suffers an impairment of his liberty and privacy."

Their interests compare favoral ly in their substantiality with those of the nine Ohio high school students facing suspension for as short as one day and not more then ten days. There, this Court held that due process under the Fourteenth Amendment required at a minimum that they be given some kind of notice and some kind of a hearing before action by school officials to suspend them. *Goss v. Lopez,* 419 U.S. 565 (1975).

The panel order, then, is defective in that it requires the district court to make the DCSS prepare and file a plan in accordance with an opinion which treats the students affected as "elements" rather than persons. It is also defective because of the narrow scope of the evidence which the trial judge may receive to be "in accordance with this opinion." *Pitts by Pitts,* supra, 887 F.2d at 1450-1451.

Chief Justice (then-Justice) Rehnquist described a similar situation in his order denying the request of the school board for a stay of a "busing" order in *Board of Ed., Etc. v. Superior Court of Cal.* (1980) 448 U.S. 1343 at 1348:

> "...The Board's primary contention here is that 'white flight,' which all parties concede has taken place in the school district, will accelerate if this plan is put into effect... Because projections indicated that the school district in 1987 will consist of only 14% white students, the Superior Court asserted that its task was to achieve the optimal use of white students in the schools so that the maximum numbers of schools may be desegregated.
>
> "I find this analysis somewhat troublesome, since it puts 'white' students much in the position of textbooks, visual aids, and the like--an element that every good school should have. And it appears clear that this Court, sooner or later, will have to confront the issue of 'white flight' by whatever term it is denominated..."

The interests of the adversely-affected students, as real parties in interest, can be properly raised only by separate representation in their behalf. *Johnson v. San Francisco Unified School District* (9th Cir. 1974), 500 F.2d 349, 353. If there is a remand, they should be allowed to intervene. Rule 24(a)(2), F.R.Civ.Proc. *Martin v. Wilks,* 109 S.Ct. 2180,2185 (1989). In view of their inability to retain an attorney, an attorney or an *amicus* should be appointed for them. Compare *Bob Jones University v. United States,* 456 U.S. 922 (1982).

The rights of these innocent students should be considered vis-a-vis those of the respondents upon the facts in this case, and not the facts in the cases where minority students were just emerging from the rigid racial separation of the past. Compare *Bakke,* supra, 438 U.S. at 298. For example, the word "segregation" (where persons classified as "minorities" may freely transfer) should not be given the same breadth here as in those earlier cases.

The legislative nature of the order requires that students just now adversely affected be given the same latitude in the presentation of evidence in opposition to it as they would have under the democratic procedures guiding a school board, including evidence of "white flight." See *A Scholar Who Inspired It Says Busing Backfired,* an interview with Dr. James A. Coleman, the senior author of the 1966 *Equality of Educational Opportunity Survey.* The National Observer, June 27, 1975, p.1.

In the mandate's present form, the trial court is bound to fashion a plan so difficult to comply with as to "condemn a school district once governed by a board which intentionally discriminated, to judicial tutelage for the indefinite future." *Board of Education of Oklahoma City Public Schools v. Dowell,* 111 S.Ct. 630, 638 (1991). And during that period innocent, adversely-affected students are to be subjected to loss of their constitutional rights, in violation of the Due Process Clause of the Fifth Amendment to the Constitution.

CONCLUSION

For the reasons stated above, the Intervenors opposed to judicially ordered assignment of students on a racial basis in *Carlin v. Board of Education, San Diego Unified School District,* as *amici curiae*, respectfully request this Court to reverse the Court of Appeals' ruling.

Respectfully submitted,

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Counsel for *Amici Curiae*
In Pro Bono Publico
890 Knob Hill Drive
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Dated: April 29, 1991

APPENDIX

APPENDIX A

STUDENTS

(Child, living in District, subject to busing, who can read and understand the statement below

TO THE BOARD OF EDUCATION, SAN DIEGO UNIFIED SCHOOL DISTRICT:

I, the undersigned child, residing in the San Diego Unified School District, respectfully object to school authorities making me, because of my race, go away from my neighborhood public school location to classes, without my consent and the consent of my parent(s), as a violation of my rights.

NAME	AGE	ADDRESS	DATE
Lisa C	12	[illegible]	19, 1981
Angie C	10	[illegible]	Feb 19, 198
Cheryl L	11	[illegible]	Feb 19, 81
Erin C	11	[illegible]	Feb 19, 8
Karen	11	[illegible]	Feb 20, 8
Sandy	11	[illegible]	Feb 20, 8
Brent	11	[illegible]	Feb 20, 81
Stephan		[illegible]	Feb 20, 81
Ricky G	12	[illegible]	Feb 23, 8
Krista F	11	[illegible]	Feb 23, 8
Jerri	11	[illegible]	Feb 23, 19
Lori	11	[illegible]	Feb 23, 81
Cheryl [illegible]	12	[illegible]	Feb 23, 8

(Excerpt, L. Lester Declaration, Intervenors' Ex. 6 Id., Carlin, 7/16/8

BEST AVAILABLE COPY

APPENDIX B

Carlin v. Board of Education, No. 303,800, Superior Court, San Diego County, California; Honorable Louis M. Welsh, Presiding

Excerpt from Declaration of Larry K. Lester, marked Intervenors' Exhibit 6 for Identification at hearing on July 16, 1981.

. . ."11. On October 21, 1980, an elementary exchange program was proposed to the Board of Education of the SDUSD whch I am informed and believe and therefore allege calls for forced busing of elementary school children in said district. Thereafter, I and about 40 other members of Groundswell circulated petitions among residents of the SDUSD in the following three categories: (1) taxpayers-parents, (2) students, and (3) taxpayers-voters.

"12. On March 3, 1981, I presented to the SDUSD Board a number of petitions bearing approximately 5983 signatures, including signatures in each of the above three categories, with the attached memorandum of transmittal ('respectfully object(ing) to the mandatory assignment of children, because of their race, away from their neighborhood public school location in the San Diego Unified School District...')". . . .

Excerpt from Reporter's Transcript of Proceedings, July 16, 1981

. . ."MR. ENSTROM (counsel for Intervenors) (p.190 l.13): The number of students signing those petitions was 1,856. And the original petitions have been filed with the School District.

THE COURT: Will counsel stipulate, if called he (Mr. Lester) would so testify?

MR. STERN (counsel for Defendant): Yes, your Honor.

MRS. ROESER (counsel for Plaintiffs): So stipulated.

THE COURT: I don't think it will be necessary for Mr. Lester to testify, because they have stipulated if called he would so testify. The question before me really is the relevancy of any or all of these documents. And I would like to go through them with you and make rulings.

. . . THE COURT (p.197 l.10): (Exhibit) Six is the declaration from Mr. Lester, which I have read. I read it in the copies you handed to me the other day.

MR. ENSTROM: Very good, your Honor.

THE COURT: And I will sustain the objection there, too, on the ground it is irrelevant.

. . . MR. ENSTROM (p.197 l.20): But it is offered for a number of different purposes, your Honor.

THE COURT: If you wish to speak further to it, I of course will listen to you.

. . . MR. ENSTROM: (p.199 l.16): Yes, your Honor. Of course, I am urging that in these cases where the Court assumes a legislative role, there is a great deal more latitude as to what your Honor is required to consider in all of these matters. In other words, certainly a legislative committee which would consider these matters - -

THE COURT: Especially one that wanted to be returned to office.

MR. ENSTROM: My point is, where the Court assumes a legislative role, along with that goes greater latitude as to what evidence you want to receive.

THE COURT: You know, Mr. Enstrom, judges are never consistent. You know that. I sustain the objection.

MR. ENSTROM (p.200 l.1): Number 12, the allegation of course is the presentation to the Board of these 5,900-plus signatures, which goes to show again this long, deep, and continuing opposition to forced busing as it bears on white flight.

THE COURT: Just a moment. Yes, go ahead.

MR. ENSTROM: Number 12, that bears on white flight, particularly. When I refer to white flight, I am talking about the issues of objectors leaving the school system, which has been a matter about which evidence has been received. And I don't think it is necessarily referring to any particular race.

THE COURT: No.

. . . THE COURT (p.200 l.20): Still, I will sustain the declaration of Mr. Lester.

. . . MRS. ROESER (p.200 l.24): Your Honor, you sustained the objection? The Court said 'sustain the declaration.'

THE COURT: I am sorry, I misstated myself. I sustain the objection to the declaration."

. . . .

Supreme Court, U.S.
F I L E D
MAY 3 1991
OFFICE OF THE CLERK

(13)

No. 89-1290

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

ROBERT R. FREEMAN, *et al.*,

Petitioners,

v.

WILLIE EUGENE PITTS, *et al.*,

Respondents.

On Writ of Certiorari To The
United States Court of Appeals
for The Eleventh Circuit

BRIEF OF SOUTHEASTERN LEGAL FOUNDATION, INC. AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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May, 1991

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TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES iii

INTEREST OF AMICUS 1

STATEMENT OF THE CASE 2

SUMMARY OF ARGUMENT 2

ARGUMENT 3

I. THERE IS NO CONSTITUTIONAL VIOLATION IN THIS CASE BECAUSE ANY RACIAL IMBALANCES RESULT FROM THE CUMULATIVE EFFECT OF INDIVIDUAL DECISIONS BY DEKALB COUNTY PARENTS 3

A. Any Racial Imbalance In This Case Resulted Not From Governmental Action, But From The Cumulative Effect Of Individual Decisions By DeKalb Parents 4

B. The Effects Of Individual Choices Do Not Create Constitutional Violations 7

II. THERE IS NOT SUFFICIENT JUSTIFICATION FOR GOVERNMENT AGENCIES, WHETHER SCHOOL BOARDS OR COURTS, TO OVERRIDE DECISIONS THAT DEKALB COUNTY PARENTS MAY MAKE REGARDING THEIR CHILDREN'S RESIDENCE AND EDUCATION 10

A. Parents Have A Constitutional Right To Make Choices Regarding Education For Their Children .. 11

TABLE OF CONTENTS

B. The Assumption that Numerically Accurate Racial Balances Automatically Provide Quality Education Is Not Proven; Therefore, There Is No Justification for Nullifying Parents' Decisions Regarding What Is the Best Public School Education Available to Their Children 12

CONCLUSION 17

TABLE OF AUTHORITIES

CASES

Bazemore v. Friday, 478 U.S. 385 (1986) 9

Board of Education of Oklahoma City v. Dowell, _____ U.S. _____, 111 S.Ct. 630 (1991) 6

Brown v. Board of Education, 347 U.S. 483 (1954).....14

Carey v. Population Services International, 431 U.S. 678 (1977) 11

Dayton Board of Education v. Brinkman, 433 U.S. 406 (1977) 8

Green v. County School Board, 391 U.S. 430 (1968) 6

Hudgens v. NLRB, 424 U.S. 507 (1976).....9

Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968).....9

Keyes v. School District No. 1, 413 U.S. 189 (1973) 13, 16

Lugar v. Edmondson Oil Co., Inc., 457 U.S. 922 (1982).....9

Marsh v. Alabama, 326 U.S. 501 (1946).....9

Meyer v. Nebraska, 262 U.S. 390 (1923) 11

Moore v. City of East Cleveland, 431 U.S. 494 (1977) 11

Moose Lodge No.107 v. Irvis, 407 U.S. 163 (1972).....9

Mueller v. Allen, 463 U.S. 388 (1983) 10

Pasadena City Board of Education v. Spangler, 427 U.S. 424 (1976) 8

Pierce v. Society of Sisters, 268 U.S. 510 (1925) 11, 16

Pitts v. Freeman, 887 F.2d 1439 (1989), *cert. granted*, No. 89-1290 (1991) 3, 15

Prince v. Massachusetts, 321 U.S. 158 (1944).....11

Rendell-Baker v. Kohn, 457 U.S. 830 (1982).....9

CASES

Spencer v. Kugler, 404 U.S. 1027 (1972) 8

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No. 89-1290

IN THE

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ROBERT R. FREEMAN, *et al.*,

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v.

WILLIE EUGENE PITTS, *et al.*,

Respondents.

On Writ of Certiorari To The
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for The Eleventh Circuit

INTEREST OF AMICUS

The Southeastern Legal Foundation, Inc. ("Southeastern") submits its brief *amicus curiae* in this case. The parties have consented to the filing of this brief, and their consent letters have been filed with the Clerk of this Court.

Southeastern is a non-profit corporation organized in 1976 for the purpose of advancing public interest viewpoints in adversarial proceedings involving significant issues. Dedicated to economic and social progress through the equitable administration of law, Southeastern presents the views of its supporters who believe the rights of all persons should be properly protected and balanced in the courts. Towards that end, Southeastern has participated as *amicus curiae* in a number of cases before this Court, including *Common Cause v. Schmitt*, 455 U.S. 129 (1982); *Federal*

Energy Regulatory Commission v. Mississippi, 456 U.S. 742 (1982); *South Florida Chapter of the AGC of America, Inc. v. Metropolitan Dade County, Florida*, 723 F.2d 846 (11th Cir. 1984), *cert. denied*, 469 U.S. 871 (1984); *City of Richmond v. J. A. Croson Co.*, ____ U.S. ____, 109 S.Ct. 706 (1989); and *Pacific Mutual Life Ins. Co. v. Haslip*, Case No. 89-1279 (March 4, 1991).

Southeastern has been previously involved in this case by filing, with permission of the District Court, an *amicus curiae* brief in support of a group of minority parents who sought to intervene in the case. By order dated December 19, 1990, the District Court allowed those parents to intervene as plaintiffs in the litigation.

STATEMENT OF THE CASE

Amicus Southeastern adopts the statement of the case contained in the brief of Petitioners and the brief of *amicus curiae* Plaintiffs-Intervenors.

SUMMARY OF ARGUMENT

Any racial imbalance in the DeKalb County School System is present, not because of any actions by any governmental agency, but because of the cumulative effect of the individual decisions of parents in DeKalb County. There can be no constitutional violation based upon the independent actions of private individuals, and the courts should not force the petitioners to "correct" the parents' decisions. Parents have a fundamental right to govern their children's education in search of quality instruction, and there is no justification in this case for their judgment to be overruled.

ARGUMENT

I.
THERE IS NO CONSTITUTIONAL VIOLATION IN THIS CASE BECAUSE ANY RACIAL IMBALANCES RESULT FROM THE CUMULATIVE EFFECT OF INDIVIDUAL DECISIONS BY DEKALB COUNTY PARENTS.

The fundamental issue in this case is whether the Eleventh Circuit Court of Appeals is correct in requiring the DeKalb County School System (DCSS) to implement involuntary assignment plans such as gerrymandering of school zones, grade reorganization, and busing, *Pitts v. Freeman*, 887 F.2d 1439, 1450 (1989), *cert. granted*, No. 89-1290 (1990), or whether the DCSS has fulfilled its constitutional responsibility by implementing voluntary student assignment systems. Although the parties to this appeal are the school board and a group of concerned parents, there are other parents whose rights and concerns about quality education also must be placed in the balance.

In the course of a school desegregation melee, it is difficult for courts to sift through the opinions of experts and the interests of the parties without losing sight of the individual children whose education is at stake. Self-appointed representatives presume to speak for those children and their parents, and experts talk about them. Yet, in this case, the Court is not forced to rely solely upon the parties and their experts to determine the educational goals of individual students. It need only look, as did the District Court, at the fact that DeKalb County parents have made independent decisions to live in a particular neighborhood and send their children to a particular school.

A.
Any Racial Imbalance In This Case Resulted Not From Governmental Action, But From The Cumulative Effect Of Individual Decisions By DeKalb Parents.

One of the few facts that is undisputed in this case is that during the time that the DCSS has been under court supervision, DeKalb County has experienced profound demographic changes. Between 1975 and 1980, approximately 64,000 non-white citizens moved into southern DeKalb County, while 37,000 white citizens moved from that area to surrounding counties. Pet. App. 38a. As the Court of Appeals noted, these demographic changes resulted in northern DeKalb County's non-white population increasing by 102% between 1970 and 1980, while the non-white population in southern DeKalb increased by 661%. *Pitts*, 887 F.2d at 1442.

These demographic changes necessarily affected the racial balance of the DCSS. Between 1976 and 1986, for example, the population of children in the DeKalb County elementary schools decreased by 15%, but the enrollment of black students increased by 86%. *Id.* Enrollment in DCSS high schools declined by 16%, although black enrollment increased by 119%. Pet. App. 39a. The District Court found, and the Court of Appeals did not dispute, that the school system's previous unconstitutional segregation did not cause the current residential and educational racial imbalance, and that the DCSS has acted in good faith, within the limits of its ability, to combat the demographic shifts. Pet. App. 45a - 46a. The school system's actions include voluntary programs such as a Minority-to-Majority transfer program and several magnet schools. *Pitts*, 887 F.2d at 1441.

The evidence in the record, then, shows that any current racial imbalance in the DCSS is not a result of the past unconstitutional actions by the school board. Rather, it is the

result of the individual choices of DeKalb County parents to live in a certain county and in particular neighborhoods.

Furthermore, the evidence in the record shows that these choices were unfettered by any government actions such as prior school segregation, zoning regulations or enforcement of discriminatory restrictive covenants. It is convenient to speculate, as did the Court of Appeals, that parents chose their homes because of prior educational segregation, *Pitts*, 887 F.2d at 449, or any number of unseemly motives, but the evidence in the record is to the contrary. As the District Court found, the demographic changes

> were inevitable as the result of suburbanization, that is work opportunities arising in DeKalb County as well as the City of Atlanta, which attracted blacks to DeKalb; the decline in the number of children born to white families during this period while the number of children born to black families did not decrease; blockbusting of formerly white neighborhoods leading to selling and buying of real estate in the DeKalb area on a highly dynamic basis; and the completion of Interstate 20, which made access from DeKalb County into the City of Atlanta much easier.

Pet. App. 44a - 45a.

None of these factors demonstrates discriminatory actions or intent on the part of any governmental agency, and some of them, such as increased job opportunities, were beneficial to minorities. Thus, the parents of the school children involved in this case made their decisions unfettered by unconstitutional governmental action. They chose their neighborhoods, and through the two voluntary assignment programs, may choose schools outside their residential neighborhoods. Those choices are as free as any can be in an urban, industrialized society.

This fact distinguishes the DCSS from the system in *Green v. County School Board*, 391 U.S. 430 (1968), where this Court held that a "freedom of choice" plan did not meet the school board's constitutional obligation. The *Green* school system had been racially segregated for many years, a problem that made affirmative steps by the school board necessary. A mere freedom of choice system could not meet this Court's mandate for "the dismantling of well-entrenched dual systems" such as the one in that case. *Green*, 391 U.S. at 437.

Neither the parties to this appeal nor Southeastern contend that purely voluntary plans would automatically satisfy constitutional requirements if the racial imbalance in this case were due to the past segregation of DeKalb County schools. The facts in this case, however, show that the DCSS is more accurately compared to the school system in *Board of Education of Oklahoma City v. Dowell*, _____ U.S. _____, 111 S.Ct. 630 (1991). In that case, the school board proposed to abolish its involuntary student assignment plan for lower grades while keeping a voluntary majority-to-minority plan, a change that would result in severe racial imbalance in certain schools. *Id.*, 111 S.Ct. at 634. According to the District Court, the racial imbalance was due to residential segregation that "was the result of private decisionmaking and economics" rather than former school segregation. *Id.*, 111 S.Ct. at 638 n. 2. Although this Court decided the case on other grounds, it instructed the District Court to review the proposed plan on remand "under appropriate equal protection principles," citing cases requiring proof of discriminatory purpose. *Id.*, 111 S.Ct. at 638.

Parents in DeKalb County are in a similar posture, having made their decisions based upon many factors, none of which is the former segregation in the DCSS. For example, some of those parents asked to intervene in this case after the Court of Appeals rendered the decision that is on appeal to this Court. The District Court, which retained

jurisdiction by virtue of the Eleventh Circuit Court of Appeals remand of the case, granted the motion. *See*, Brief of Plaintiffs-Intervenors, App. 1a.

The intervenor parents presented as witnesses in the District Court hearing two experts and nine black parents of children enrolled in the DCSS. These parents, while supporting desegregation, expressed opposition to involuntary student assignment in order to achieve integration:

> The intervenors' witnesses believed that quality of education should be the most important consideration, and should not be sacrificed solely for the purpose of obtaining strict racial balance through busing.

Brief of Plaintiffs-Intervenors, App. 3a.

DeKalb County minority parents, then, made their decisions based on a number of factors, chief of which is the quality of education that their children will receive. None of those factors, according to the evidence in this case, was discrimination or discriminatory actions by government officials. Speculation about societal discrimination or other unjust influences is contrary to the facts in this case and should not be used as a reason for ignoring the decisions that individual parents have made.

B.
The Effects Of Individual Choices Do Not Create Constitutional Violations.

Given the fact that any racial imbalance in the DCSS results from the cumulative effect of individual decisions by DeKalb citizens, the next question, and one of the two issues upon which this Court granted review, is the responsibility of the DCSS to remedy that imbalance. The answer is that the DCSS has an obligation only to remedy its constitutional

violations, and independent decisions of private individuals do not create a constitutional violation requiring a government remedy.

This principle has been evident since early in this Court's decisions regarding school desegregation. In *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), the Court, while affirming the broad equitable powers of federal courts to combat the effects of unconstitutional segregation, noted

> the familiar phenomenon that in metropolitan areas minority groups are often found concentrated in one part of the city. In some circumstances certain schools may remain all or largely of one race until new schools can be provided or neighborhood patterns change. . . . In light of the above, it should be clear that the existence of some small number of one-race, or virtually one-race, schools within a district is not in and of itself the mark of a system that still practices segregation by law.

Swann, 402 U.S. at 25-26. See also *Spencer v. Kugler*, 404 U.S. 1027 (1972) (affirming New Jersey statute establishing school district lines to coincide with boundaries of political subdivisions, even though that districting pattern created racial imbalance). The fact that a racially mixed community has many schools that are predominantly white or predominantly black, "without more, of course, does not offend the Constitution." *Dayton Board of Education v. Brinkman*, 433 U.S. 406, 417 (1977).

In *Pasadena City Board of Education v. Spangler*, 427 U.S. 424 (1976), this Court considered a system in which schools became racially imbalanced as a result of a "quite normal pattern of human migration." *Id.* at 436. Noting that the demographic shifts "were not attributed to any segregative actions" by the school system, the Court vacated a District Court order requiring the school system to

rearrange its attendance zones each year to maintain a particular racial balance. *Id.* at 436, 441.

A similar case is *Bazemore v. Friday*, 478 U.S. 385 (1986), in which the Court considered charges of racial discrimination against a state agricultural extension service. One of the issues was the operation of extracurricular 4-H and Homemaker Clubs in area schools. Many of those clubs were all-white or all-black, in spite of non-discriminatory admissions policies. This Court found no constitutional violation in the operation of the clubs, noting the District Court's finding that any racial imbalance "was the result of wholly voluntary and unfettered choice of private individuals." *Id.*, 478 U.S. at 407 (White, J., concurring).

These decisions are consistent with, if not based upon, bedrock principles of the U.S. Constitution. With the exception of the 13th Amendment, *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968), the Constitution and its Amendments restrict individual actions in only a narrow range of circumstances. *See, e.g., Marsh v. Alabama*, 326 U.S. 501 (1946) (private company conducting public functions of municipality held subject to the limitations of the 1st and 14th Amendments); *Lugar v. Edmondson Oil Co., Inc.*, 457 U.S. 922 (1982) (individual who has acted with or obtained significant aid from state officials, or whose conduct is otherwise chargeable to the state, is subject to due process restrictions).

Thus, there is no constitutional violation even when private persons infringe upon such individual rights as free speech, *Hudgens v. NLRB*, 424 U.S. 507 (1976); racial equality, *Moose Lodge No.107 v. Irvis*, 407 U.S. 163 (1972); or due process, *Rendell-Baker v. Kohn*, 457 U.S. 830 (1982).

Although individuals may be charged with the violation of particular state or federal statutes, the fact remains that constitutional violations do not result from independent individual actions. Similarly, the "numerous private choices of individual parents of school age children" cannot create a

constitutional violation. *Mueller v. Allen*, 463 U.S. 388, 399 (1983) (state tax deduction for expenses of educating children, including expenses of parochial schools, held not to violate establishment clause of the Constitution). The cumulative actions of individual DeKalb County parents in moving to particular school districts or enrolling their children in particular schools do not constitute an equal protection violation that needs government redress.

II.
THERE IS NOT SUFFICIENT JUSTIFICATION FOR GOVERNMENT AGENCIES, WHETHER SCHOOL BOARDS OR COURTS, TO OVERRIDE DECISIONS THAT DEKALB COUNTY PARENTS MAY MAKE REGARDING THEIR CHILDREN'S RESIDENCE AND EDUCATION.

Neither the DCSS nor any other government body coerced DeKalb County parents into living in particular neighborhoods. Both the county government and county school system have allowed parents to chose housing within the limits of their financial ability, and to chose schools for their children either within the limits of school boundary zones or through DCSS voluntary programs. This Court has consistently recognized the constitutional right of parents to make such decisions. There is no justification for either federal courts or school boards to override those individual decisions and compel students to attend specific schools in order to achieve a particular racial balance.

A.
Parents Have A Constitutional Right To Make Choices Regarding Education For Their Children.

This Court has long recognized that parents have a strong interest in decisions regarding child-rearing, *Moore v. City of East Cleveland*, 431 U.S. 494 (1977) (invalidating zoning ordinance limiting occupancy of residence to a narrowly defined "family"), and education, *Pierce v. Society of Sisters*, 268 U.S. 510, 534-35 (1925) (striking down Oregon law requiring children to attend public schools because of "liberty of parents and guardians to direct the upbringing and education of children under their control"); *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923) (holding unconstitutional a state law that prohibited the teaching of foreign languages to children, citing the power of parents to control the education of their children). These rights are related to the fundamental right to privacy, *Carey v. Population Services International*, 431 U.S. 678, 685 (1977), which right the government may not infringe upon absent a compelling state interest. *Id.* at 686.

The government cannot "standardize its children" by forbidding them to attend private schools, *Pierce*, 268 U.S. at 535, or by forcing them to live in certain family patterns, *Moore*, 431 U.S. at 506. Similarly, the government cannot treat school children as indistinguishable units and simply ignore the individual interests of parents in desegregation and quality education.

Of course, the government may intervene in parental decisions in order to protect children, *Prince v. Massachusetts*, 321 U.S. 158 (1944). The state may not, however, on the strength of a mere claim that it knows best, sweep into the lives of children that it does not know in order to substitute its conventional wisdom for a parent's individualized knowledge and concern.

In this case, DeKalb County parents chose their neighborhoods, and within the limits imposed by the DCSS, may choose schools for their children outside their residential boundary lines. These parental decisions are as free a choice as any can be in a complex democratic society. This Court has recognized the right to make those decisions as an important one, and a government body, whether school board or courts, should not interfere with that right absent proof that the interference is narrowly drawn to meet a compelling state interest.

B.
The Assumption that Numerically Accurate Racial Balances Automatically Provide Quality Education Is Not Proven; Therefore, There Is No Justification for Nullifying Parents' Decisions Regarding What Is the Best Public School Education Available to Their Children.

There can be no doubt that equal education opportunities and the elimination of racial discrimination are compelling state interests that must be balanced against, and in many cases override, parental decisions. "[T]he very concept of ordered liberty precludes allowing every person to make his own standards on matters of conduct in which society as a whole has important interests." *Wisconsin v. Yoder*, 406 U.S. 205, 215-16 (1972).

Nor can there be any doubt that the fundamental goal of desegregation is not a perfect numerical racial balance, but quality education for all students. "It is well to remember that the course we are running is a long one and the goal sought in the end—so often overlooked—is the best possible educational opportunity for all children. Communities deserve the freedom and the incentive to turn their attention

and energies to this goal of quality education, free from protracted and debilitating battles over court-ordered student transportation." *Keyes v. School District No. 1*, 413 U.S. 189, 253 (1973) (Powell, J., concurring in part and dissenting in part).

The interest in non-discriminatory, quality education, however, is not automatically served by involuntary student assignment plans, and the evidence is certainly far from conclusive that merely counting heads will redress the evils of racial discrimination in education. Absent clear evidence to that effect, government agencies and federal courts should defer to individual parents regarding what would be the best education for individual children.

According to various surveys, the majority of parents of school students believe that they should have the right to choose the school where their child attends. *See, e.g.*, Rossell & Glenn, *The Cambridge Controlled Choice Plan*, 20 Urb. Rev. 75, 77 (1988). It is all too easy to classify these parents as prejudiced or uneducated, and to emphasize the need for government limitations on parental choice in order to prevent segregation of racial minorities. *See, e.g.*, Wells, *Improving Schools Finds Role for Free Market*, N.Y. Times, March 14, 1990, at A1, col. 2. Such simplification, however, is both unhelpful and inaccurate.

Accusing opponents of involuntary student assignment of supporting discrimination ignores evidence that many parents opposed to such plans happily enroll their children in racially mixed magnet schools. *See, e.g.*, Schofield, *Black and White in School* (1982). Furthermore, a large number of minority parents have defected from public schools, preferring to start their own independent programs. *See, e.g.*, Gruson, *Private School for Blacks*, N.Y. Times, October 21, 1986 at C1, col. 5 (minority parents, increasingly dissatisfied with public schools, are turning to private schools that stress academics and discipline); Ratteray, *One System is Not Enough: A Free-Market Alternative for the Education of*

Minorities, American Education 4 (November, 1984) (over 300 independent schools operated by and for minorities).

Other reasons for opposition to involuntary student assignment include the fact that children are pulled out of their neighborhoods and educated at schools distant from their homes, which makes it more difficult for parents to be involved in the education process. This forced distance hurts the education of minority children. Studies show a high correlation between parental involvement and improved student achievement and behavior. Jennings, *Studies Link Parental Involvement, Higher Student Achievement*, Education Week 20 (April 4, 1990). If parents cannot be involved because their children are transported to far-away schools, the children suffer.

In addition, black students assigned to mainly white schools are all too often resegregated by placement in remedial or other special classes composed mostly of other minorities. *See, e.g.*, Hochshild, *Thirty Years after Brown* 200-22, 26-28 (1985); Hochshild, *The New American Dilemma* 160-168 (1984); Deal, *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 Yale L.J. 470-516 (1976). Thus, strict numerical balancing can compound rather than resolve educational inequalities.

Many opponents of involuntary student assignment plans, then, like the intervenors in this case and this Court in *Brown v. Board of Education*, 347 U.S. 483 (1954), have as their primary concern quality education for minorities. They simply do not believe that merely counting heads and ensuring that the proper number of minority students are sitting next to the proper number of majority students will spontaneously produce a quality education.

The evidence on this issue is, at best, inconclusive. Many scholars have stated that no one knows definitely whether involuntary student assignment plans in search of racial balance lead to a quality education for minorities. *See,*

e.g., Cook, *Social Science and School Desegregation: Did We Mislead the Supreme Court?*, 5 Personality & Soc. Psychology Bull. 420 (1979); St. John, *The Effects of School Desegregation on Children: A New Look at the Research Evidence*, Race and Schooling in the City 84, 87-88 (1981); Crain & Mahard, *How Desegregation Orders May Improve Minority Academic Achievement*, 16 Harv. C.R.-C.L. L. Rev. 693 (1982); Orfield, *Research, Politics and the Antibusing Debate*, 42 Law & Contemp. Probs. 141 (Autumn 1978).

The most recent comprehensive treatment of the issue is the National Institute of Education study, *School Desegregation and Black Achievement* (1984). According to the NIE, school districts with voluntary desegregation programs reported academic gains, while those districts with involuntary plans either experienced no gains or saw actual losses. *Id.* at 26.

Thus, there is little evidence, and certainly none in this case, that nullifying parental decisions through involuntary student assignment will produce the quality education that everyone seeks. Rather, the evidence that is available shows that racial balance through mandatory plans actually impedes the educational progress of minority students.

Instead of supporting parents' search for quality education, or marshalling the evidence that will justify a school board or court's interference with that search, proponents of involuntary assignment programs often substitute what the district court in this case termed "a paternalistic view" of their responsibility. Brief of Plaintiffs-Intervenors, App. p. 4a. It is quite easy to dismiss parents opposed to busing by considering them, as do the original plaintiffs in this case, to be "naive and ill-informed," *id.* at 4a, and to announce that a school system and district court must consider busing "regardless of whether the plaintiffs support such a proposal." *Pitts*, 887 F.2d at 1450. This Court, however, has consistently rejected such a patronizing attitude towards parental child-rearing decisions. "The child

is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." *Pierce*, 268 U.S. at 535.

Condescension and conventional wisdom cannot be allowed to substitute for evidence, and should not be used as a basis for determining the burdens to placed upon school children. If the state decides to interfere with a parent's wishes regarding quality education for his or her child, it should be certain, or at least have more proof than is currently available, that the state's programs will meet its goals.

Neither school boards nor courts should be part of a social experiment to see what will happen if a school system transports the right number of minority children to a school with the right number of majority children. "It is time to return to a more balanced evaluation of the recognized interests of our society in achieving desegregation with other educational and societal interests a community may legitimately assert. This will help assure that integrated school systems will be established and maintained by rational action, will be better understood and supported by parents and children of both races, and will promote the enduring qualities of an integrated society so essential to its genuine success." *Keyes*, 413 U.S. at 253 (Powell, J., concurring in part and dissenting in part).

CONCLUSION

Amicus respectfully requests that this Court reverse the judgment of the Eleventh Circuit Court of Appeals, and affirm the decision of the District Court in this case.

RESPECTFULLY SUBMITTED,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

ROBERT R. FREEMAN, et al.,

Petitioners,

—v.—

WILLIE EUGENE PITTS, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES iv

CONSENT OF PARTIES 1

INTEREST OF *AMICUS* 1

SUMMARY OF ARGUMENT 2

ARGUMENT 6

I. THE AFFIRMATIVE OBLIGATION TO ELIMINATE THE VESTIGES OF *DE JURE* SEGREGATION AS FAR AS PRACTICABLE EXTENDS TO ALL ASPECTS OF A SCHOOL SYSTEM, AND CANNOT BE ACCOMPLISHED OR REVIEWED ON AN INCREMENTAL BASIS 6

A. Incremental determinations of "unitary" status would be inconsistent with all prior decisions of this Court 7

1. *Dowell* set forth the workable standards that do not allow an incremental approach to determining when a school *system* has achieved "unitary" status . 7

2. This Court has consistently recognized that the racial identification of schools results from interrelated features of a single system that cannot be isolated from each other or subject to divisible remedy 9

PAGE

3. This Court's decisions are in full accord with the empirical findings of educators and social scientists 12

B. Incremental findings of unitary status would frustrate the transition to unitary school systems mandated by *Brown* and all subsequent decisions of this Court 14

1. Incremental findings of unitary status would allow vestiges of *de jure* segregation to survive the termination of court jurisdiction in a school district 14

2. Incremental unitary findings would preclude future use of programs that implicate several facets of the school system 16

3. Incremental review of unitary status would give rise to repeated and protracted litigation 17

C. The vestiges of *de jure* segregation in DeKalb County have had interrelated segregative effects, and cannot be considered in isolation 18

II. THE DEKALB COUNTY SCHOOL SYSTEM REMAINS UNDER AN AFFIRMATIVE DUTY TO REMEDY, TO THE EXTENT PRACTICABLE, CURRENT RACIAL IDENTIFIABILITY OF THE SYSTEM'S SCHOOLS 20

A. The demographic changes that have occurred in DeKalb County cannot shield the school authorities from responsibility for remedying existing racial identity in the school system—including in the area of student assignments 22

PAGE

B. Where a school board that has not completed the transition to a unitary system is not obligated to implement further affirmative remedial steps, school authorities, when they do act, remain obligated to take no action that would impede completion of the transition..... 28

CONCLUSION 30

TABLE OF AUTHORITIES

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Adams v. *United States*, 620 F.2d 1277 (8th Cir.), *cert. denied*, 449 U.S. 826 (1980).....17, 27n*

Board of Educ. of Oklahoma City v. *Dowell*, ____ U.S. ____, 111 S. Ct. 630 (1991)..... *passim*

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Clark v. *Board of Educ.*, 705 F.2d 265 (8th Cir. 1983). 17

Columbus Bd. of Educ. v. *Penick*, 443 U.S. 449 (1979)..... *passim*

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PAGE

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PAGE

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PAGE

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BRIEF FOR THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

CONSENT OF PARTIES

Petitioners and respondents have consented to the filing of this brief, and their letters of consent are being filed separately herewith.

INTEREST OF AMICUS

The Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee") was established in 1963 at the request of President Kennedy to help assure civil rights to all Americans by affording legal services otherwise unavailable to minorities and the poor pursuing claims for equal treat-

ment under the law. The Lawyers' Committee is a non-profit private corporation that has enlisted the services of thousands of members of the private bar in cases involving voting, education (including school desegregation), employment, housing, municipal services, the administration of justice and law enforcement.

The Lawyers' Committee has a long history of direct support of and participation in cases in the federal courts furthering school desegregation. This Court's decision will undoubtedly have significant implications in other school desegregation cases. *Amicus* submits that its experience in school desegregation litigation enables it to provide a perspective different from the parties and other *amici* on the issues before this Court.

SUMMARY OF ARGUMENT

The DeKalb County public schools were segregated in 1954. They were segregated in 1969, when this case began, and they remain segregated today. At no time has petitioner school board fulfilled the obligation imposed on it by *Brown* v. *Board of Education*, 347 U.S. 483 (1954), 349 U.S. 294 (1955), and *Green* v. *New Kent County School Bd.*, 391 U.S. 430 (1968), to achieve a unitary school system. Contrary to what it would have this Court believe now, it is not operating a school system overwhelmed by demographic changes that frustrated its efforts to achieve "a unitary system in which racial discrimination would be eliminated root and branch." *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971). It made no such efforts. To the contrary, as the Court below said (887 F.2d at 1440-41):

> Despite our [previous] admonishments [in this case], the district court ruled that the DeKalb County School Board ("DCSS") is under no affirmative duty to take steps to desegregate an acknowledged segregated system in the area of student assignment because the DCSS closed all of its *de jure* black schools in 1969.
>
> * * * *

> Black students constitute 47 percent of the DCSS population. Despite the system's racial balance, 50 percent of the black students attend schools with black populations of more than 90 percent. Similarly, 27 percent of the DCSS's white students attend schools with white populations of more than 90 percent. The DCSS operates a segregated school system.

Under these circumstances the district court was plainly wrong, under the decisions of this Court, in denying any further relief to plaintiffs except in the limited area of faculty reassignments, and in refusing further supervision of the school board other than in that regard. The Court below accordingly was plainly right in reversing the district court and requiring it to see to it that the school board continue to take all practicable steps to achieve a unitary system. As this Court recently said, the inquiry was properly directed to the question "whether [the school board has] complied in good faith with the desegregation decree since it was entered," which it clearly has not, and "whether the vestiges of past discrimination [have] been eliminated to the extent practicable," which certainly has not happened. *See Board of Educ. of Oklahoma City* v. *Dowell*, ____ U.S. ____, 111 S. Ct. 630, 638 (1991).

Petitioner seeks to avoid the force of the application of these principles in two ways. The first, as the Court below noted, is by reliance on its action of closing the black schools of its dual system in 1969, thus taking a preliminary step towards the elimination of racial student assignments. In this way petitioners persuaded the district court to treat the matter of student assignments as a closed book that could not be reopened despite the overwhelming evidence of racial segregation in the system, and despite petitioner's admitted failure to eliminate the vestiges of *de jure* segregation in other facets of school operations, such as faculty, staff, and facilities. *See Green* v. *New Kent County School Bd.*, *supra*, 391 U.S. at 435; *Board of Educ. of Oklahoma City* v. *Dowell*, *supra*, 111 S. Ct. at 638. Secondly, petitioner relies on the evidence of concededly large population moves into the county in the

past decade and a half, causing significant changes in the size and racial composition of the school population.

Neither of these factors should be held to excuse petitioner from its well-established duty to eliminate vestiges of *de jure* racial segregation and achieve a unitary system in which racial discrimination is eliminated root and branch.

With regard to the first point, the decisions of this Court since *Green*, *supra*, have consistently required school boards and supervising district courts to treat the task of eliminating the vestiges of racial discrimination in terms of the entire school system rather than its component parts. *De jure* segregation is a system-wide constitutional violation. The remedy requires examining and treating all aspects of the school system as one problem, needful of coordinated attention. *See Brown* v. *Board of Education*, 349 U.S. 294 (1955) (*Brown II*); *Green*, *supra*; *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971). *See also Davis* v. *Board of School Comm'rs*, 402 U.S. 33, 37 (1971); *Rogers* v. *Paul*, 382 U.S. 198 (1965); *Bradley* v. *School Bd.*, 382 U.S. 103, 105 (1965); *United States* v. *Montgomery Bd. of Educ.*, 395 U.S. 225, 231 (1969). Thus in *Keyes* v. *School District No. 1*, 413 U.S. 189 (1973), the Court expressly applied a presumption that discriminatory action in a particular aspect of the system would necessarily spread to and affect other components of the system. *Id.*, 413 U.S. at 196, 201-2, 214. *See also Dayton Bd. of Educ.* v. *Brinkman* (*Dayton II*), 443 U.S. 526 (1979); *Columbus Bd. of Educ.* v. *Penick*, 443 U.S. 449, 467 (1979). The system approach was reiterated in *Dowell* this year. *See Dowell*, *supra*, 111 S. Ct. at 636, 638. Here petitioner's failure to deal with its whole system in a unitary fashion is admitted. *See* Point I, *infra*.

Wholly apart from this Court's repeated insistence on system-wide analysis and treatment, the incremental approach urged by petitioner and embraced by the district court will not work in practice. Achievement of a unitary system means elimination, to the extent practicable, of racially identifiable schools. It is common experience that racial segregation in faculty and staff, such as that petitioner has permitted to persist in this case, along with disparities in facilities and resources, contributes to the perception of schools as

"black" or "white." Thus, the need for system orientation, rather than an incremental, piece-by-piece approach, is recognized and endorsed by the extensive literature on school desegregation. *See* Point I, *infra*.

The extensive demographic changes that have taken place in DeKalb County since the entry of the judgment in this case in 1969 do not diminish the legal and constitutional obligations of petitioner. The school authorities did not cause the onrushing tide of people into DeKalb County. But during this period of influx the schools remained racially identifiable because of the decisions of the DeKalb County school board which never eliminated faculty and staff segregation and, notwithstanding purportedly racially neutral student assignment practices in 1969 and 1970, assigned black students predominantly to those schools where black faculty and staff were located. Given that "people gravitate toward schools," as this Court has recognized, the school authorities cannot walk away from their responsibility for the persistence of racially identifiable schools whose racial stamp encouraged, and was reinforced by, the diversion of the flow of people into two streams—white and black. *See* Point II, *infra*.

Petitioner thus remains responsible for taking all practicable steps to remedy existing racial identification of the DeKalb County schools—including in the area of student assignments—until all vestiges of *de jure* segregation have been eradicated. Throughout the transition to a unitary system, the DeKalb County school board is also obligated to take no action, with respect to any aspect of the school system, that would impede the completion of the transition. The Court below correctly left the question of exactly what steps are necessary to eliminate completely the dual system to the school board itself, and, in the event of default by school authorities in that responsibility, to the discretion of the district court. *See* Point II, *infra*.

ARGUMENT

I

THE AFFIRMATIVE OBLIGATION TO ELIMINATE THE VESTIGES OF *DE JURE* SEGREGATION AS FAR AS PRACTICABLE EXTENDS TO ALL ASPECTS OF A SCHOOL SYSTEM, AND CANNOT BE ACCOMPLISHED OR REVIEWED ON AN INCREMENTAL BASIS

Since *Brown* v. *Board of Education*, this Court has consistently reaffirmed the affirmative duty of school boards to complete the transition from a *de jure* segregated school system to a system in which the vestiges of past discrimination have been eliminated to the extent practicable. This Court has recognized that various discriminatory acts or omissions in a single school system have interrelated effects that cause and perpetuate the vestiges of *de jure* segregation, including racially identifiable schools, and that discrimination in one particular component of the system cannot be considered in isolation. Thus the Court has consistently applied system-wide remedies to address the system-wide nature of the constitutional violation. This Court's decision in *Board of Educ. of Oklahoma City* v. *Dowell* reiterated these principles and set forth the workable standards for determining when a formerly *de jure* segregated school system has been brought into compliance with the Constitution—and thus when court jurisdiction in a desegregation case can properly be withdrawn.

As demonstrated below, however, incremental findings of "unitary" status—and with them incremental terminations of court authority to impose remedies addressing particular facets of a school system—would effectively preclude the type of review of school *systems*, and of "every facet of school operations," mandated by *Dowell* and the prior decisions of this Court. Such incremental "unitary" findings would require district courts, based on the implementation by a school board of particular non-discriminatory practices, to sequentially "carve out" discrete areas of the school system from further judicial consideration—notwithstanding that

central vestiges of discrimination affecting those discrete areas, including the racial identity of schools, had never been remedied. Such incremental reviews of unitary status would certainly inhibit the ability of district courts to determine, as *Dowell* now requires, whether at a given point in time all vestiges of past discrimination have been eliminated from the school system to the extent practicable.

Incremental reviews of "unitary" status also would inevitably prove unworkable in practice. Such reviews would require district courts to treat in isolation facets of school systems that are, as educators and social scientists have recognized, integrally related in fact. Such findings could also preclude the use of such remedies as magnet schools or majority-to-minority transfer programs that necessarily require court consideration of various facets of the school system—facets that may already have been "carved out" from the remedial power of the district court by an earlier finding of "unitariness." Moreover, the opportunity for such incremental findings can only be expected to give rise to repeated and protracted litigations, as school boards continually seek to narrow the scope of district court review even before the transition to a "unitary" system has been completed.

This Court should instead reaffirm the principles articulated in *Brown* and all subsequent cases: only the transition to a racially nondiscriminatory school system can cure the constitutional violation of *de jure* segregation and justify the removal of judicial jurisdiction over the school district.

A. Incremental determinations of "unitary" status would be inconsistent with all prior decisions of this Court.

1. *Dowell* set forth the workable standards that do not allow an incremental approach to determining when a school *system* has achieved "unitary" status.

In *Board of Educ. of Oklahoma City* v. *Dowell*, ____ U.S. ____, 111 S. Ct. 630 (1991), this Court reiterated that a school desegregation decree can be dissolved only when a school board has "made a sufficient showing" that "a school system . . . has been brought into compliance with the command of the Constitution." *Id.*, 111 S. Ct. at 636, 638. This

Court set forth the inquiry necessary to determine whether such compliance has been achieved: district courts should consider "whether [a school board has] complied in good faith with the desegregation decree since it was entered, and whether the vestiges of past discrimination [have] been eliminated to the extent practicable." *Id.* at 638.

This Court then explained in plain terms the standard for determining whether the vestiges of *de jure* segregation have in fact been eliminated as far as practicable. Reiterating that every facet of the school system must be free from those vestiges, this Court instructed that:

> the District Court should look not only at student assignments, but "to every facet of school operations—faculty, staff, transportation, extra-curricular activities and facilities." *Green*, 391 U.S., at 435, 88 S. Ct., at 1693. *See also Swann*, 402 U.S., at 18, 91 S. Ct., at 1277 ("[E]xisting policy and practice with regard to faculty, staff, transportation, extra-curricular activities, and facilities" are "among the most important indicia of a segregated system").
>
> *Id.* at 638.

Dowell thus embodies fundamental tenets, articulated in *Green*, *Swann* and the other precedents of this Court, requiring a school board to demonstrate that the school "*system* . . . has been brought into compliance with . . . the Constitution"—consistent with the constitutional mandate that all vestiges of the *de jure* system be eliminated to the extent practicable. This constitutional mandate would be seriously undermined if district courts were incrementally denied the power, with regard to particular facets of the school system, to consider appropriate and practicable remedies to ensure a complete transition to a unitary system in which racial discrimination would be eliminated root and branch.

2. This Court has consistently recognized that the racial identification of schools results from interrelated features of a single system that cannot be isolated from each other or subject to divisible remedy.

The constitutional violation addressed in *Brown*, as in all subsequent cases through *Dowell*, was the operation of racially segregated systems, and not merely the existence of particular discriminatory policies in discrete areas. This Court thus anticipated *systemic*, rather than incremental, remedies: district courts were instructed to apply remedies that "may call for elimination of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth in [*Brown I*]." *Brown* v. *Board of Education* (*Brown II*), 349 U.S. 294, 300 (1955).

Green v. *New Kent County School Bd.*, 391 U.S. 430 (1968), reiterated in unambiguous terms that the constitutional violation of *de jure* segregation is system-wide and that even a facially non-discriminatory student assignment plan can be rendered ineffective by vestiges of *de jure* segregation in other facets of the system. The "*Green* factors" reflect how in *de jure* segregated systems, "[r]acial identification of the system's schools was complete, extending not just to the composition of student bodies at the . . . schools but to every facet of school operations—faculty, staff, transportation, extracurricular activities and facilities." *Green*, 391 U.S. at 435. In *Green*, the New Kent County school board's sole reliance on a student assignment plan thus "ignored the thrust of *Brown II*" by failing to address the school system as an integrated whole. In remanding *Green*, the Supreme Court expressly instructed the district court to consider, for example, student assignments "in light of considerations respecting other aspects of the school system such as the matter of faculty and staff desegregation." *Id.* at 442 n.6.

This consideration of school *systems*, rather than an incremental focus on discrete aspects of a school district, reflected earlier Court decisions that had recognized the interrelated effects of discrimination in such discrete areas as faculty and student assignments. In *Rogers* v. *Paul*, 382 U.S. 198 (1965) (per curiam), for example, the Court held that students have

standing to challenge discriminatory faculty assignments not only because "racial allocation of faculty denies [students] equality of educational opportunity," but also because a segregated faculty can "*render[ ] inadequate* an otherwise constitutional pupil desegregation plan." *Id.* at 200 (emphasis added). Similarly, in *Bradley* v. *School Bd.*, 382 U.S. 103, 105 (1965) (per curiam), the Court recognized "the relation between faculty allocation on an alleged racial basis and the adequacy of the desegregation plans." *See also United States* v. *Montgomery Bd. of Educ.*, 395 U.S. 225, 231-32 (1969) (desegregation of faculty and staff is "a goal that we have recognized to be an important aspect of the basic task of achieving a public school *system* wholly free from racial discrimination") (emphasis added). Indeed, in *Davis* v. *Board of School Comm'rs*, 402 U.S. 33, 37 (1971), this Court reiterated the general principle that it constitutes reversible error to treat particular areas of a school district "in isolation from the rest of the school system."

In light of the system-wide nature of the constitutional violation, this Court since *Green* has consistently approved system-wide, rather than incremental, remedies to achieve the mandates of the Fourteenth Amendment. District courts have "not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of past as well as bar like discrimination in the future," *Green*, 391 U.S. at 438 n.4. This Court has reiterated that the interaction among, and the combined effect of, discrimination in various components of a school system causes and can perpetuate the vestiges of *de jure* segregation.

Swann, emphasizing a district court's "broad power to fashion a remedy that will assure a unitary school *system*," thus explained that the quality of school buildings and equipment, or the organization of sports activities, for example, can contribute to a school's racial identification—notwithstanding non-discriminatory student assignment practices. *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 16 (1971) (emphasis added). In particular, the failure to integrate faculty and staff will normally perpetuate such racial identity: "[i]ndependent of student assignment, where it is possible to identify a 'white school' or a 'Negro school'

simply by reference to the racial composition of teachers and staff . . . a *prima facie* case of violation of substantive constitutional rights under the Equal Protection Clause is shown." *Id.* at 18.

Keyes similarly highlighted the extent to which the various facets of a school system must be evaluated together to determine whether the school district has fulfilled its affirmative constitutional obligation. As the Court explained, "[i]n addition to the racial and ethnic composition of a school's student body, *other factors, such as the racial and ethnic composition of faculty and staff* and the community and administration attitudes toward the school, *must be taken into consideration.*" *Keyes* v. *School District No. 1*, 413 U.S. 189, 196 (1973) (emphasis added). The Court in *Keyes* recognized the interrelationship of the various "*Green* factors" in perpetuating the unconstitutional racial identification of schools: "*the use of mobile classrooms, the drafting of student transfer policies, the transportation of students, and the assignment of faculty and staff, on racially identifiable bases, have the clear effect of earmarking schools according to their racial composition.*" *Id.* at 201-02 (emphasis added). On remand, the school board in Denver District No. 1 thus bore the burden of showing that school board actions affecting various aspects of the school system, "*considered together*," were "not factors in causing the existing condition of segregation in these schools. *Id.* at 214 (emphasis added).

Similarly, in Dayton, the school board had failed to remedy the segregated school system by allowing the interplay of various facets of the district—including faculty assignment, attendance zones, school construction and grade structure—to perpetuate the racial identity of the schools. *See Dayton Bd. of Educ.* v. *Brinkman* (*Dayton II*), 443 U.S. 526 (1979). This Court placed particular emphasis on the Dayton school board's failure to integrate faculty and staff: the district court had erroneously "ignored . . . the significance of purposeful segregation in faculty assignments in establishing the existence of a dual school system." *Id.* at 536 (citation omitted). Explaining that such "purposeful segregation of faculty by race was inextricably tied to racially motivated student assignment practices," this Court remained unwilling to

"deprecate the relevance of segregated faculty assignments as one of the factors in proving the existence of a school system that is dual for teachers *and* students." *Id.* at 536 & n.9 (emphasis in original). *See also Columbus Bd. of Educ.* v. *Penick*, *supra*, 443 U.S. at 467 (1979) ("[t]he practice of assigning black teachers and administrators only or in large majority to black schools . . . served as discriminatory, system-wide racial identification of schools").

This Court's decisions have thus consistently required that the system—and not isolated, discrete parts—be rid of the vestiges of *de jure* segregation and its perpetuation. Nothing in the Court's decision in *Spangler* suggests or should allow a different result. *See Pasadena Bd. of Educ.* v. *Spangler*, 427 U.S. 424 (1976). There, this Court considered whether a district court properly refused to modify a desegregation decree which provided that, in perpetuity, no Pasadena school could have "a majority of any minority" students; this Court concluded that the district court "exceeded its authority" by "enforcing its order so as to require annual readjustment of attendance zones." *Id.* at 432, 435. That decision, however, did not bar the district court from continuing to provide appropriate and practicable remedies necessary to complete the constitutionally mandated transition to a unitary system. Indeed, to the extent this Court even considered the issue, it observed that "an injunction often requires continuing supervision by the issuing court and always a continuing willingness to apply its powers and processes on behalf of the party who obtained equitable relief." *Id.* at 437 (quotation omitted).

3. This Court's decisions are in full accord with the empirical findings of educators and social scientists.

Rejecting the "view that schools are relatively static constructs of discrete variables," education specialists have generally recognized that schools are "dynamic social systems made up of interrelated factors." S. Purkey and M. Smith, "Effective Schools—A Review," 83(4) *Elementary School Journal* 440 (1983). *See also* A. Bryk, V. Lee and J. Smith, "High School Organization and its Effects on Teachers and

Students," in *Choice and Control in American Education*, Vol. I (W.H. Clune and J.P. White, eds.) 139 (1990). Thus, effective desegregation has required a system-oriented, rather than incremental, approach. As one educator has observed:

> Too often schools seem to focus on only one goal or strategy to achieve effective desegregation. It seems important to stress the need to develop comprehensive plans and strategies. Generally speaking, the attainment of one goal will enhance the possibilities of achieving another.

W.D. Hawley, "Equity and Quality in Education: Characteristics of Effective Desegregated Schools," in *Effective School Desegregation* 298-99 (W.D. Hawley, ed.) (1981).

Studies have consistently shown that student assignments alone do not eliminate the racial identity of schools, and that effective (or ineffective) desegregation results from the interplay of such student assignments with other factors. *See, e.g.*, G. Forehand and M. Rogasta, "A Handbook for Integrated Schooling," U.S. Dept. of Health, Education and Welfare 11-12 (1976) (desegregation is a multi-dimensional process affected by the various facets of the system). *See also* Sheehan, "A Study of Attitude Changes in Desegregated Intermediate Schools," 53 *Sociology of Education* 51-59 (1980); R. Scott and J. McPartland, "Desegregation as National Policy: Correlates of Racial Attitudes," 19 *Amer. Educ. Research J.* 397-414 (1984); Hughes, Gordon and Hillman, *Desegregating America's Schools* (1980) (noting various measures of inequality within schools that must be reviewed to develop an effective desegregation plan).

Among other things, educators and social scientists alike have concluded that faculty and staff integration are essential components of effective school desegregation. After studying school districts in various cities, the United States Commission for Civil Rights concluded in 1967 that the maintenance of faculty and staff segregation perpetuates schools' racial identifiability. U.S. Commission on Civil Rights, *Racial Isolation in the Public Schools* 67 (1967) ("[t]he racial identity of Southern schools is maintained in a variety of ways"

including "continued segregation of teaching staff").* A 1976 report prepared by the Education Testing Service for the Department of Health, Education and Welfare similarly considered the inclusion of racial minorities on faculty and administrative staffs to be "perhaps . . . our most important recommendation." *See* G. Forehand and M. Ragosta, "A Handbook for Integrated Schooling," *supra*, at 11-12. *See also* W.D. Hawley, et al., *Assessment of Current Knowledge About the Effectiveness of School Desegregation Strategies*, Vanderbilt University Study (Vol. I) 86 (1981).

B. Incremental findings of unitary status would frustrate the transition to unitary school systems mandated by *Brown* and all subsequent decisions of this Court.

1. Incremental findings of unitary status would allow vestiges of *de jure* segregation to survive the termination of court jurisdiction in a school district.

Because incremental reviews of unitary status focus only on whether isolated discriminatory practices have been eliminated from a particular facet of the school system during some period of time, such incremental inquiries by definition disregard those vestiges of *de jure* segregation—including, in particular, the racial identification of schools—that result from the interrelated effects of the various forms of discrimination in the school system. Where such incremental findings

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* The Civil Rights Commission later reiterated that "[a]dequate minority representation on the school staff is critical to integrated education." *Fulfilling the Letter and Spirit of the Law: Desegregation of the Nation's Public Schools* 122 (1976). *See also* Tauber, "Housing, Schools, and Incremental Segregative Effects," 441 *Annals of the American Academy of Political and Social Science* 157-67 (1979) (manipulation of student assignment process, "combined with segregative assignment of teachers, have combined to cause, enhance, and maintain racial identifiability of schools . . . in Milwaukee"); G. Orfield, *Must We Bus? Segregated Schools and National Policy* 369 (1978) (in Cleveland, "[t]he racial identity of the schools was reinforced by intense faculty segregation"); Billingsley, et al., "School Segregation and Residential Segregation: A Social Science Statement," in *School Desegregation: Past, Present, and Future* 235-36 (W.G. Stephan & J.R. Feagin, eds.) (1980).

are permitted, school boards can sequentially demonstrate that particular discriminatory practices affecting particular facets of the school system have been eliminated, while vestiges of *de jure* segregation—particularly the racial identification of schools—continue to operate. If particular discriminatory practices are considered incrementally and in isolation, the sum of the parts of the system will be less than the constitutionally mandated whole—a school system cleansed of the vestiges of *de jure* segregation.

This means, in turn, that after a particular facet of the school system would be "carved out" from further judicial review based on the implementation of particular non-discriminatory practices, vestiges of *de jure* segregation could continue to operate so that even those non-discriminatory practices could soon be rendered ineffective. This is precisely what this Court has always sought to avoid, as this Court has recognized that the continuing vestiges of prior discrimination in such areas as faculty assignments and funding can render even non-discriminatory student assignment policies inadequate to remedy violations of the Fourteenth Amendment. *Green*, *supra*, 431 U.S. at 439-42. *See also Rogers* v. *Paul*, *supra*, 398 U.S. at 200 (segregated faculty can "render[ ] inadequate an otherwise constitutional pupil desegregation plan"); *United States* v. *Montgomery Bd. of Educ.*, *supra*, 395 U.S. at 231.

At the same time, if particular facets of the school system were to be carved out from further judicial consideration, a school board could presumably become free to take actions in those discrete areas that actually have the effect of impeding the transition to a unitary system—so long as these actions do not otherwise constitute new violations of the Fourteenth Amendment. *Cf. Dowell*, 111 S. Ct. at 638 (if the Oklahoma City School board achieved unitary status in the city school system, further school board actions would be judged under "appropriate equal protection principles"). Such a result would plainly impede the constitutionally mandated transition to a system in which vestiges of *de jure* segregation have been eliminated to the extent practicable. It would also disregard that "[p]art of the affirmative duty imposed by [this Court's] cases, as . . . decided in *Wright* v.

Council of Emporia, 407 U.S. 451 (1972), is the obligation not to take any action that would impede the process of disestablishing the dual system and its effects." *See Dayton*, *supra*, 443 U.S. at 538. *See also United States* v. *Scotland Neck Bd. of Educ.*, 407 U.S. 484 (1972); *Columbus*, 443 U.S. at 460; *Swann*, 402 U.S. at 20-21.

Ultimately, this would mean that at whatever point in time a school board will have finally succeeded in obtaining sequential "unitary" findings for all facets of the school system, remaining vestiges of *de jure* segregation may already have operated to re-establish segregation in those areas where incremental unitary findings have been made. At this point, it would become virtually impossible to conduct any meaningful inquiry as to whether the school board had in fact taken all practicable steps to eliminate all vestiges of prior discrimination—the very inquiry *Dowell* prescribed.

2. Incremental unitary findings would preclude future use of programs that implicate several facets of the school system.

In many cases, incremental findings of unitary status would also preclude the use of remedies, such as optional transfer programs and magnet schools, that would otherwise be the most practicable means of completing the transition to a school system in which the vestiges of *de jure* segregation have been eliminated.

Remedies such as optional majority-to-minority transfer programs have "long been recognized as a useful part of every desegregation plan." *See Swann*, 402 U.S. at 26. Such plans allow members of the majority racial group of a particular school to transfer to other schools where they will be in the minority. While this Court has explained that transfer provisions are "an indispensable remedy for those students willing to transfer . . . in order to lessen the impact on them of the state-imposed stigma of segregation," *Swann*, 404 U.S. at 26, such optional transfer plans—that require adjustment of student assignments, faculty assignments, transportation, or the allocation of school resources—would be

precluded in any district where any of those implicated facets of the school system had already been declared "unitary".

A similar result would follow in the case of magnet school programs, which draw students with particular qualifications from throughout the district to a particular school. *See Clark* v. *Board of Educ.*, 705 F.2d 265, 272 (8th Cir. 1983) (directing establishment of magnet schools to promote "equal educational opportunity"); *Adams* v. *United States*, 620 F.2d 1277, 1296-97 (8th Cir. 1980) (endorsing magnet schools as a "technique[ ] to ensure students . . . will receive equal educational opportunities"). Implementation of magnet school plans plainly implicates the allocation of school resources, student assignments, faculty assignments, and, in some cases, transportation. The use of such magnet school remedies, however, would be precluded where any of those facets of the school system had already been "carved out" from further judicial consideration.*

3. Incremental review of unitary status would give rise to repeated and protracted litigation.

In a regime allowing incremental "unitary" findings, district courts could remove from further judicial consideration particular facets of the educational system, notwithstanding that the school system has not yet been brought into compliance with the Constitution. It is not difficult to contemplate the annual or even more frequent litigation that would ensue, as school boards could continually seek to "carve out" more and more components of the educational process.

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* Ironically, the circumstances in DeKalb County are a plain illustration of this result. If, indeed, it was appropriate to "carve out" the area of student assignments from further district court consideration, then presumably such an incremental finding could have been made as early as 1972—after the school board had purportedly implemented a racially non-discriminatory student assignment policy for several years. Such an incremental finding of "unitary" status, however, would have precluded the implementation in subsequent years of the very majority-to-minority transfer programs and magnet school programs that the district court considered necessary to effectuate the transition to a school system rid of the vestiges of *de jure* segregation. *See* J.A. 216 (majority-to-minority transfer program adopted in 1972); J.A. 217 (magnet school program adopted in 1980's).

Without having to establish that the racial identity of schools, or any other vestiges of the *de jure* system, had been eliminated, a school board could ask a district court to find that practicable steps had been taken to eliminate discrimination in some discrete area. School boards could be expected subsequently to seek one such "carve out" after another, as such relief would self-evidently provide a means to limit the school board's obligations in the transition to a unitary system. At the same time, individual litigations over the alleged "unitary" status of each facet of a school system could require protracted factual inquiry in each case—including expert testimony, or documentary and other evidence concerning developments in the school district.

There is, moreover, no reason to believe that school boards would seek only to "carve out" the six general facets of school systems identified in *Green*. Rather, motions could be made for "unitary" findings with respect to particular portions of a school district, particular schools, or even particular facets of a single school. Indeed, no limit could easily be placed on the extent to which motions for incremental "unitary" findings might be narrowly focused.

These scenarios by no means represent mere hypothetical speculation. In the First Circuit, where incremental findings of unitary status are permitted, *see Morgan* v. *Nucci*, 831 F.2d 313 (1st Cir. 1987), the Boston school board has already sought such incremental unitary findings for small fragments of the system, including discrete groups within the system's overall teaching staff. *See Morgan* v. *Burke*, 926 F.2d 86, 92 (1st Cir. 1991) (school board sought to "fragment" progress in desegregation into "very small parts" and proposed subdividing faculty and staff into blacks and other minorities, a proposal considered similar to subdividing student assignments on a school-by-school basis).

C. The vestiges of *de jure* segregation in DeKalb County have had interrelated segregative effects, and cannot be considered in isolation.

The interrelated effects of the vestiges of discrimination in various aspects of a school system are vividly illustrated in

this case. Here, the DCSS argues that it implemented a purportedly neutral student assignment plan for some period beginning in 1969.* Yet even during this period—as before and at all times thereafter—schools in DeKalb County retained their racial identity as a result of school board action in such areas as faculty and staff assignments. Indeed, it is undisputed that faculty and staff in DeKalb County have never been desegregated. This meant that the implementation of the DCSS's neighborhood student attendance plan, even from 1969 to 1972, in fact resulted in black students being assigned predominantly to schools where the black faculty and staff were located—thereby rendering ineffective on its face a desegregation plan that under other circumstances might have served to limit racial identifiability.

The DCSS's own explanation for the continued segregation of its faculty and staff illustrates the interrelated effects of the vestiges of discrimination. The DCSS has attributed faculty and staff segregation largely to faculty and staff preferences to work in schools located near their residences. *See* J.A. 76; J.A. 230. This explanation makes plain that school construction, abandonment and expansion policies—viewed by the DCSS and the district court as generally falling within the purview of student assignment policies—have a significant effect on determining the effectiveness of steps in the area of faculty assignment.

In this case, moreover, the DCSS took actions during the life of the desegregation decree that served to exacerbate the interrelated effects of these perpetuated vestiges. The DCSS built and expanded existing schools and drew attendance zones in a manner that guaranteed racial homogeneity, both of students and faculty, rather than racial integration. Thus in 1976 the district court had found that the DCSS had drawn attendance zones in such a way as to increase segregation within the system. J.A. 89-92. The following year, in the context of considering an expansion of the Flat Shoals elementary school, the district court specifically advised the DCSS to consider "alternatives to further construction, such

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* The district court, however, was itself unable to determine how long even these steps in the area of student assignments had been purportedly effective. J.A. 214.

as alterations in attendance zones, and, possibly, some form of busing, in order to remedy the overcrowding which is bound to occur and to promote desegregation in the county schools." J.A. 122. Moreover, "in considering additions to other predominantly black schools in the county," the DCSS was "admonished to keep this in mind." The district court's admonition has gone unheeded.

The racial identities of schools were locked in place by the DCSS's continued resistance to effective minority transfer and magnet schools programs. The DCSS consistently placed arbitrary restraints on the number of black students able to transfer to white schools, notwithstanding this Court's instruction in *Swann* that in order for a minority transfer program to be effective, "space must be made available in the school in which [the transferring student] desires to move." *Swann*, 402 U.S. at 26-27. Thus, in 1976, the district court found that "the regulations imposed under the M-to-M program perpetuate the vestiges of the dual system." J.A. 83. In 1979, the district court once again was forced to preclude modifications sought by the DCSS to restrict the numbers of black students able to transfer to white schools. J.A. 138-50.

The interrelated effects of the vestiges of discrimination in the various facets of school operations collectively determined, and have perpetuated, the racial identities of the schools in DeKalb County. While vestiges of the *de jure* system remain, various facets of the school system have been subject to their interrelated effects.

II

THE DEKALB COUNTY SCHOOL SYSTEM REMAINS UNDER AN AFFIRMATIVE DUTY TO REMEDY, TO THE EXTENT PRACTICABLE, CURRENT RACIAL IDENTIFIABILITY OF THE SYSTEM'S SCHOOLS

Since 1954, the schools in DeKalb County have retained their racial identity. Notwithstanding the adoption by the DCSS of certain purportedly non-discriminatory practices in the area of student assignment for some period beginning in 1969, it is not disputed that the DCSS never desegregated fac-

ulty and staff and always assigned black students disproportionately to those schools in which black faculty and staff could be found. Moreover, since 1969, the DCSS's school construction and abandonment policies have served primarily to exacerbate the racial identifiability of the schools.

Notwithstanding the continuous racial identifiability of the schools, the DCSS now claims it should be released from further court supervision in the area of student assignments—not because it has satisfied its affirmative duty to complete the transition to a school system in which the vestiges of *de jure* segregation have been eliminated, but because demographic changes during the life of the desegregation decree purportedly contributed to existing segregated student assignments in the district. Given the DCSS's failure ever to take the steps necessary to eliminate the blatant racial identifiability of the county schools, however, there can be little doubt that the DCSS itself influenced relevant demographic patterns and their reinforcement of existing racial identification. This Court has long recognized the causal relationship between the perpetuation of racial identity of schools and demographic patterns that serve to reinforce such racial identity. And, in fact, while the demographic changes occurred, the DeKalb County school board took steps that served to reinforce and even exacerbate segregative effects of these patterns. The DCSS accordingly remains under an affirmative duty to take practicable steps to remedy the existing racial identification that now exists in the district's schools—including in the area of student assignment.

It remains true that the scope of the affirmative duty to effectuate the transition to a "unitary" school system is defined by the scope of the constitutional violation. Even in a case where a school board is no longer obligated to implement affirmative remedial steps, however, the school board, when it does act, remains under a continuing obligation to take no action that would hinder the constitutionally mandated transition to a school system in compliance with the Fourteenth Amendment.

A. The demographic changes that have occurred in DeKalb County cannot shield the school authorities from responsibility for remedying existing racial identity in the school system—including in the area of student assignments.

It is well settled that when a school district has operated a *de jure* segregated system, it bears the burden of demonstrating that the existence of racially identifiable schools is not the result of school board action. *See Dayton II*, 443 U.S. at 537 ("systemwide nature of the violation furnished *prima facie* proof that current segregation . . . was caused at least in part by prior intentionally segregative official acts"); *Columbus*, 443 U.S. at 465 n.13 (burden on the school board was to prove that its conduct was not a "contributing cause" of racial identifiability of schools); *Keyes*, 413 U.S. at 211 & n.17 (burden is on the school board to prove that its conduct did not "create or contribute to" the racial identifiability of schools, or that racially identifiable schools are "in no way the result of" school board action); *Swann*, 402 U.S. at 26 ("[t]he court should scrutinize [predominantly one-race] schools, and the burden upon the school authorities will be to satisfy the court that their racial composition is not the result of present or past discriminatory action on their part").

Thus the Courts of Appeals, including the Court below, have consistently held that a school system that has not removed all vestiges of segregation cannot avoid the constitutional obligation to do so on the basis of claims that ongoing demographic changes have made the process more difficult. *See Vaughns* v. *Board of Educ.*, 758 F.2d 983, 988 (4th Cir. 1985); *Davis* v. *East Baton Rouge Parish School Bd.*, 721 F.2d 1425, 1435 (5th Cir. 1983); *Lee* v. *Macon County Bd. of Educ.*, 616 F.2d 805, 810 (5th Cir. 1980). This doctrine reflects the principle that school authorities cannot avoid the continuing duty to desegregate a school system based on the consequences of their failure, to date, effectively to dismantle all features or vestiges of the dual system. These holdings are supported by the decisions of this Court in *Columbus* and *Swann* and are premised on the clear recognition by this Court that patterns of segregated schooling influence housing choices and cause or contribute to residential segregation—with the result that the patterns of school segregation are compounded and exacerbated.*

In this case, it would be difficult for the DCSS to maintain its burden of demonstrating that existing racial segregation is not the result of school board action, given the district's previously described segregative actions. It is an insuperable burden in light of the responsibility of school authorities for influencing demographic patterns that have reinforced the racial identity of the schools, and the actions of the school authorities that actually magnified the segregative effects of those demographic changes.

It should come as no surprise that the demographic changes in DeKalb County occurred in racially identifiable patterns reinforcing the racial identifiability of the DCSS schools. This Court has long recognized that "people gravitate toward school facilities," *Swann*, 402 U.S. at 20, and that racially identifiable schools influence the gravitational pull. Indeed, the DCSS's claim that it should be released from its affirmative duty to dismantle the dual system because of demographic changes is certainly not novel, and similar claims have already been rejected by this and lower courts. In *Columbus*, for example, school authorities contended that "because many of the involved schools were in areas that had become predominately black residential areas by the time of trial, the racial separation in the schools would have occurred even without the unlawful conduct of [the school board]." *Columbus*, 443 U.S. at 465 n.13. That

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* This rule is not one of absolute liability without regard to the facts and circumstances of a particular case, however, as the opinion of the Court below might be read. This Court's school desegregation precedent establishes a framework according to which a previously *de jure* school district may seek to demonstrate that segregation in its schools or programs is not the result of the dual system, its failure to eradicate that system and its effects, or any actions it has taken that have impeded that process. A school board that has effectively implemented remedies to desegregate all aspects of a school system and, therefore, has removed the racial identifiability and stigma that influence housing choice and residential segregation, may be in a position to demonstrate that subsequently occurring racial imbalance is not the product of any failure to dismantle *de jure* schooling. Whatever the circumstances in which a district could carry this burden, they are not presented by the DCSS in this case.

argument—then as it should be now—was easily dispatched by this Court: "the phenomena described by [the school board] *seems only to confirm, not disprove* . . . that school segregation is a contributing cause of housing segregation." *Id.* (emphasis added). This Court found persuasive the district court's findings that notwithstanding adoption of an ostensibly racially neutral attendance policy, the school board's failure to dismantle the dual school system perpetuated racially identifiable residential patterns. *See Penick* v. *Columbus Bd. of Educ.*, 429 F. Supp. 229, 259 (S.D. Ohio 1977).

The DCSS obviously did not cause people to move into DeKalb County. But as explained in *Keyes*, the perpetuation of identifiably black or white faculty in schools

> [has] the clear effect of earmarking schools according to their racial composition, and this, in turn, together with the elements of student assignment and school construction, may have a profound reciprocal effect on the racial composition of residential neighborhoods within a metropolitan area, thereby causing further racial concentration within the schools.
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> —*Keyes*, 413 U.S. at 202.

By failing to eliminate the racial identifiability of its schools, the DCSS cast the die for the occurrence of demographic changes that would reinforce the racial identifiability of the schools.

Moreover, once those demographic changes began and the need arose for increased school capacity to accommodate the increased student population, the DCSS affirmatively exacerbated the effects of the demographic changes on the school system through its policy of expansion. Rather than build schools or expand existing schools in areas that promised a racially diverse student body, the DCSS instead built and expanded schools in the peripheral parts of DeKalb County that guaranteed racial homogeneity. Together with the neighborhood student attendance plan and restricted minority transfer programs, the new and expanded schools locked the system into a separation of the races. Black schools were

located in areas within DeKalb County that assured their racial identifiability would remain intact.

In *Swann*, this Court recognized that within a school system that had yet to achieve unitary status, the location of schools can have a powerful effect on residential patterns, particularly when the students are assigned to schools on a neighborhood zoning basis:

> The location of schools may thus influence the patterns of residential development of a metropolitan area and have important impact on composition of inner-city neighborhoods.
>
> In the past, choices in this respect have been used as a potent weapon for creating or maintaining a state-segregated school system. In addition to the classic pattern of building schools specifically intended for Negro or white students, school authorities have sometimes, since *Brown*, closed schools which appeared likely to become racially mixed through changes in neighborhood residential patterns. This was sometimes accompanied by building new schools in the areas of white suburban expansion farthest from Negro population centers in order to maintain the separation of the races with minimum departure from the formal principles of 'neighborhood zoning.' Such a policy does more than simply influence the short-run composition of the student body of a new school. *It may well promote segregated residential patterns which, when combined with 'neighborhood zoning,' further lock the school system into the mold of separation of the races.*
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> —*Swann*, 402 U.S. at 20-21 (emphasis added).

Studies by social scientists have confirmed that racially identifiable schools influence demographic patterns so as to reinforce the schools' racial identifiability. *See, e.g.*, Billingsley, *et al.*, "School Segregation and Residential Segregation: A Social Science Statement," in *School Desegregation: Past, Present, and Future* 240 (W.G. Stephan & J.R. Feagin, eds.) (1980). Indeed, as thirty-eight social scientists agreed

a collective statement, "[a]ll discriminatory acts by school authorities that contribute to the racial identifiability of schools promote racially identifiable neighborhoods." *Id.* at 236.

Moreover, a school board can trigger or influence a racially identifiable demographic trend in neighborhoods by "signalling" that the racial identity of an existing school is to change, or, in the case of a new school, what its racial identity will be. This is particularly so in communities undergoing substantial demographic changes, because "the changing racial composition of a school's pupils and staff serves as a signal to the public—realtors, homeseekers, residents, etc.—that school authorities expect the school to become all black." Tauber, *Demographic Perspectives on Housing and School Segregation*, 21 Wayne L. Rev. 833, 843 (1975). *See also* "School Segregation and Residential Segregation: A Social Science Statement," *supra*, at 235 ("[c]hange in the racial identifiability of a school can influence the pace of change in racial composition in a 'changing' residential area").

A significant, and perhaps most obvious, reason for this relationship between racially identifiable schools and demographic patterns is that parents perceive that black schools are generally inferior to white schools. *See, e.g.*, Tauber, *Demographic Perspectives on Housing and School Segregation*, *supra*, 21 Wayne L. Rev. at 843 ("if predominantly black schools were not perceived as inferior schools, then school attendance zones would play only a minor role in residential choices and in the behavior of real estate businesses").

Swann, *Keyes* and *Columbus* teach that when assessing the relationship between racially identifiable demographic trends and school board action, the district court must consider the acts (and omissions) of the school board before and during the time period in which those trends occurred. An analysis which considers only the present overlooks the vital question: whether past actions have contributed to present harm. This "segregative snowball" effect, *Penick* v. *Columbus Bd. of Educ.*, 429 F. Supp. 229, 259 (S.D. Ohio 1977), has been recognized by numerous lower courts and taken into account

when determining the appropriate scope of relief required to effectively desegregate a formerly *de jure* school system.*

Not surprisingly, racially identifiable demographic trends are less likely in communities which have undergone successful school desegregation. "School desegregation, if effectively implemented, removes the racial identifiability of schools, and hence removes one of the restrictions on housing choice by white and black families." Tauber, "School Desegregation and Racial Housing Patterns," in *New Directions for Testing and Measurement: Impact of Desegregation* 63 (D. Monti, ed.) (1982). "[S]chool desegregation has helped ease the traditional patterns of rigid residential segregation. . . . Once the racial character of a neighborhood can no longer easily be stamped by an identification of its schools as black or white, racial barriers in housing begin to lower." Taylor, *Brown, Equal Protection and the Isolation of the Poor*, 95 Yale L.J. 1700, 1711 (1986) (*citing* D. Pearce, *Breaking Down Barriers: New Evidence on the Impact of Metropolitan School Desegregation on Housing Patterns* (1980)).

Here, by contrast, the district court's reliance on demographic changes to relieve the DCSS of its duty to desegregate the schools in DeKalb County simply ignored how demographic changes responded to, and thus reinforced, racially identifiable schools. Had the DCSS effectively acted to remedy the vestiges of *de jure* segregation, the DCSS would not today retain its dual characteristics.

The district court's analysis of the DCSS's responsibility for the current racial identifiability of the schools in DeKalb County overlooked the critical analysis: whether those ves-

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* *See, e.g.*, *United States* v. *Yonkers Bd. of Educ.*, 624 F. Supp. 1276 (S.D.N.Y. 1985), *aff'd*, 837 F.2d 1181 (2d Cir. 1987), *cert. denied*, 486 U.S. 1055 (1988); *United States* v. *Board of School Comm'rs*, 573 F.2d 400, 408-09 n.20 (7th Cir. 1978); *NAACP* v. *Lansing Bd. of Educ.*, 559 F.2d 1042, 1049 n.9 (6th Cir.), *cert. denied*, 434 U.S. 997 (1977); *Evans* v. *Buchanan*, 393 F. Supp. 428, 436-37 (D. Del.), *aff'd*, 423 U.S. 963 (1975); *Hart* v. *Community School Bd.*, 383 F. Supp. 699, 706 (E.D.N.Y. 1974), *aff'd*, 512 F.2d 37 (2d Cir. 1975); *Davis* v. *School District*, 309 F. Supp. 734, 742 (E.D. Mich. 1970), *aff'd*, 443 F.2d 573 (6th Cir.), *cert. denied*, 404 U.S. 913 (1971). *See also Adams* v. *United States*, 620 F.2d 1277, 1291 (8th Cir.) (public perception of racial identity of a school is a powerful factor in shaping neighborhood residential patterns), *cert. denied*, 449 U.S. 826 (1980).

tiges of the *de jure* system, such as segregated faculty and staff, which have perpetuated the racial identities of the schools, contributed to the racially segregated character of demographic changes. The burden properly belonged on the DCSS to demonstrate that such segregative demographic changes were not influenced by racial identity of the schools that school authorities had themselves caused or perpetuated. Moreover, the district court was clearly erroneous in concluding that the DCSS's actions in response to the demographic changes had achieved maximum practical desegregation in light of the DCSS's record with regard to the location of new schools, the neighborhood student attendance plan, and the restricted minority transfer programs—steps that exacerbated the segregative effects of the demographic changes.

Because the current segregation of student assignments can only properly be considered a vestige of *de jure* segregation in DeKalb County, the DCSS continues to bear the duty to implement affirmative steps to remedy, to the extent practicable, this racial identifiability. Consideration of remedies, of course, must be based upon the current circumstances in the school system rather than those existing at an earlier point in the desegregation process. This case should be remanded to the district court so that the school board itself can implement necessary remedies. In the event of default by the school board in that duty, the district court will be in the best position to fashion an appropriate remedy.

B. Where a school board that has not completed the transition to a unitary system is not obligated to implement further affirmative remedial steps, school authorities, when they do act, remain obligated to take no action that would impede completion of the transition.

The continuing obligation of the DCSS to achieve the transition to a unitary system is fully consistent with the Fourteenth Amendment principle that a school board's affirmative duty in a given district is defined by the scope of the constitutional violation. *See, e.g., Swann*, 402 U.S. at 16; *Milliken* v. *Bradley* (*Milliken II*), 433 U.S. 267, 282 (1977). This Court has, of course, long recognized that the vestiges

of *de jure* segregation can be manifest or perpetuated through various means that are thus embodied within the violation of the Fourteenth Amendment. *See* Point I, *supra*.

Moreover, as this Court reiterated in *Dayton II*, the obligation to effectuate the transition to a unitary system includes "the obligation not to take any action that would impede the process of disestablishing the dual system and its effects." *Dayton*, 443 U.S. at 538. *See also Wright* v. *Council of Emporia*, 407 U.S. 451 (1972); *United States* v. *Scotland Neck City Bd. of Educ.*, 407 U.S. 484 (1972). This duty to "do no harm" applies without regard to the purported motivation for particular school board actions. During the transition to a school system in compliance with the Constitution, "[t]he existence of a permissible purpose cannot sustain [school board] action that has an impermissible effect" of impeding "the effectiveness of the remedy ordered to dismantle the dual system." *Wright*, 407 U.S. at 462, 470. Thus, in both *Wright* and *Scotland Neck*, school authorities could not erect new student assignment boundary lines where the effect of such new boundaries would have been to undermine progress towards school desegregation in the districts. *See Wright*, 407 U.S. at 460 (proposed action could be judged only according to whether "it hinders or furthers the process of school desegregation"); *Scotland Neck*, 407 U.S. at 489.

This duty not to impede the transition to a unitary system remains until the transition is complete. For example, even if a school district has been implementing effective steps toward the transition to a unitary system, and therefore may be under no obligation to initiate further restructuring of the school system in response to racial imbalances resulting from demographic change, it nevertheless is obligated to take no action that will impede or frustrate the transition. *See also* p. 23n., *supra*. Accordingly, when such a district does act—to adjust attendance zones, to construct or abandon schools, to assign faculty, to implement pupil transfer programs—it is obligated to act in a manner that does not exacerbate segregation within the district or "serve to perpetuate or reestablish the dual system." *Swann*, 402 U.S. at 21.

A school board that is not obligated to take further affirmative remedial steps thus cannot permissibly take the type of

action proposed by the DCSS in this case—expansion of a high school in a section of the county with a predominantly white population, where the result will be to draw students to the school from currently less segregated schools and thereby increase the separation of the races in the district.

The affirmative duty to bring a school district into compliance with the Constitution would be rendered meaningless if school authorities were free to take action during the period of transition that would hinder the process of school desegregation or even promote separation of the races in the system.

CONCLUSION

The judgment of the Eleventh Circuit Court of Appeals should be affirmed.

June 21, 1991

Respectfully submitted,

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QUESTIONS PRESENTED

1. Whether the failure of a school district, which was segregated by law, to implement an effective desegregation plan in the face of increasing residential segregation can be excused on the ground that such residential segregation has complicated the task of desegregating the schools.

2. Whether a court supervising compliance of a former *de jure* segregated school district with a desegregation decree designed to eliminate the vestiges of a long history of segregation is barred from retaining ongoing jurisdiction to enforce the decree over one area of school district operations as to which the school district has been in compliance despite the school district's perpetuation of a racially discriminatory system in other, related areas of its operations.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES v

INTEREST OF *AMICI CURIAE* 1

INTRODUCTION 3

SUMMARY OF ARGUMENT 6

ARGUMENT 8

I. DCSS'S OWN INABILITY TO IMPLEMENT AN EFFECTIVE PLAN OF SCHOOL DESEGREGATION DURING A PERIOD OF INCREASING RESIDENTIAL SEGREGATION CANNOT BE INVOKED TO REMOVE JUDICIAL SUPERVISION OVER DCSS TO ENSURE THAT IT FULFILLS ITS CONSTITUTIONAL DUTY TO DESEGREGATE IN THE AREA OF STUDENT ASSIGNMENT 8

II. EFFECTIVE DESEGREGATION MUST BE ACCOMPLISHED SIMULTANEOUSLY FOR A SUBSTANTIAL PERIOD OF YEARS IN ALL MAJOR AREAS OF SCHOOL SYSTEM OPERATIONS BEFORE A FORMER *DE JURE* SEGREGATED SCHOOL SYSTEM SUCH AS DCSS SHOULD BE RELEASED FROM JUDICIAL SUPERVISION 20

CONCLUSION 27

APPENDIX: School Desegregation:
A Social Science Statement 1a

TABLE OF AUTHORITIES

Cases ***Page***

Alexander v. Holmes County Bd. of Educ., 396 U.S. 19 (1969) 21

Armour v. Nix, No. 16,708 (N.D. Ga. Sept. 24, 1979), *aff'd mem.*, 446 U.S. 930 (1980) 12, 17

Armstrong v. O'Connell, 463 F. Supp. 1295 (E.D. Wisc. 1979) 17

Board of Educ. of Oklahoma City v. Dowell, 111 S. Ct. 630 (1991) 22, 23

Bradley v. School Bd. of the City of Richmond, 338 F. Supp. 67 (E.D. Va. 1972), *rev'd*, 462 F.2d 1058 (4th Cir. 1972). *aff'd sub nom. School Bd. of Richmond, Va. v. State Bd. of Educ. of Va.*, 412 U.S. 92 (1973) 17

Bradley v. School Bd. of the City of Richmond, Virginia, 382 U.S. 103 (1965) 22

Brown v. Board of Educ., 347 U.S. 483 (1954) ("*Brown I*") . . . . . *passim*

Brown v. Board of Educ., 349 U.S. 294 (1955) ("*Brown II*") 6, 14, 21

Columbus Bd. of Educ. v. Penick, 443 U.S. 449 (1979) 19

Cooper v. Aaron, 358 U.S. 1 19

Page

Davis v. Board of School Comm'rs of Mobile County, 402 U.S. 33 (1971) 13

Dayton Bd. of Educ. v. Brinkman, 443 U.S. 526 (1979) 19, 22

Evans v. Buchanan, 393 F. Supp. 428 (D. Del.), *aff'd*, 423 U.S. 963 (1975) 17

Green v. County School Bd., 391 U.S. 430 (1968) ..... *passim*

Hart v. Community School Bd. of Brooklyn, 383 F. Supp. 699 (E.D.N.Y. 1974), *aff'd*, 512 F.2d 37 (2d Cir. 1975) 17

Keyes v. School Dist. No. 1, Denver, Colo., 413 U.S. 189 (1973) 16, 19, 21

Keyes v. School Dist. No. 1, Denver, Colo., 895 F.2d 659 (10th Cir. 1990), *cert. denied*, 111 S. Ct. 951 (1991) 23

Little Rock School Dist. v. Pulaski City Special School Dist., 716 F. Supp. 1162 (E.D. Ark. 1989) .. 23

Milliken v. Bradley, 433 U.S. 267 (1977) ("*Milliken II*") 16, 21, 22

Monroe v. Board of Comm'rs of the City of Jackson, 391 U.S. 450 (1968) 12-13

Morgan v. Burke, 926 F.2d 86 (1st Cir. 1991) 24

Page

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Morgan v. Nucci, 831 F.2d 313 (1st Cir. 1987) 24, 26

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Pasadena City Bd. of Educ. v. Spangler, 427 U.S. 424 (1976) 18, 19, 24, 25

Penick v. Columbus Bd. of Educ., 429 F. Supp. 229 (S.D. Ohio 1977), *aff'd in part and remanded in part*, 443 U.S. 449 (1979) 17

Raney v. Board of Educ., 391 U.S. 443 (1968) 21, 26

Swann v. Charlotte-Mecklenburg Bd. of Educ., 401 U.S. 1 (1971) 13, 14, 16, 20, 21

United States v. Bd. of School Comm'ners, 573 F.2d 400 (7th Cir. 1978) 17

United States v. Charleston County School Dist., 738 F. Supp. 1513 (D.S.C. 1990) 23

United States v. Montogomery County Bd. of Educ., 395 U.S. 225 (1969) 22

United States v. Overton, 834 F.2d 1171 (5th Cir. 1987) 24

Page

United States v. State of Mississippi,
725 F. Supp. 307 (D. Miss. 1989) 23

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F. Supp. 1276 (S.D.N.Y. 1985), *aff'd*,
837 F.2d 1181 (2d Cir. 1987), *cert. denied*,
486 U.S. 1055 (1988) 17

Vaughns v. Board of Educ. of Prince George's County,
742 F. Supp. 1275 (D. Md. 1990) 23

Vetterli v. United States District Court,
435 U.S. 1304 (Rehnquist, Circuit Justice 1978) 18

Constitutional Provision

U.S. CONST., AMEND. XIV
(Equal Protection Clause) . . . . . *passim*

Miscellaneous

ASSESSMENT OF CURRENT KNOWLEDGE ABOUT
THE EFFECTIVENESS OF SCHOOL DESEGREGATION
STRATEGIES (Hawley, *et al.*, ed. 1981) 15, 25

Bryk, Lee & Smith, *High School Organization and its
Effects on Teachers and Students*, in
1 CHOICE AND CONTROL IN AMERICAN EDUCATION
(Clune & Witte eds. 1990) 20

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7 HUMAN RIGHTS 10 (1978) 19

Page

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Attitudes Toward the Public Schools*, PHI DELTA
KAPPAN, September 1990, at 44 15

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on the Self-Evaluation and Achievement
Orientation of Minority Children*,
42 LAW AND CONTEMPORARY PROBLEMS 57
(1978) 19

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SCHOOLING (Washington, D.C.: Dep't of Health,
Education and Welfare 1976) 21

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(1979) 15

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REAL ESTATE BROKERS (1969) 15

ORFIELD, MUST WE BUS? SEGREGATED SCHOOLS
AND NATIONAL POLICY (1978) 16

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Segregation: A Social Science Statement*,
in SCHOOL DESEGREGATION: PAST, PRESENT
AND FUTURE (1980) 15, 16

ORFIELD, TOWARD A STRATEGY FOR URBAN
INTEGRATION (1981) 15

Page

PEARCE, BREAKING DOWN BARRIERS: NEW EVIDENCE ON THE IMPACT OF METROPOLITAN DESEGREGATION IN HOUSING PATTERNS (1980) ... 15

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PEARCE, CRAIN & FARLEY, LESSONS NOT LOST: THE IMPACT OF SCHOOL DESEGREGATION ON THE RACIAL ECOLOGY OF LARGE AMERICAN CENTRAL CITIES (1990) 16

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UNITED STATES COMMISSION ON CIVIL RIGHTS, RACIAL ISOLATION IN THE PUBLIC SCHOOLS (1967) 16

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

No. 89-1290

ROBERT R. FREEMAN, *et al.*,
Petitioners,

v.

WILLIE EUGENE PITTS, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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BRIEF OF THE NAACP, DEKALB COUNTY, GEORGIA, BRANCH OF THE NAACP, AMERICAN JEWISH COMMITTEE, CHILDREN'S DEFENSE FUND, FUND FOR AN OPEN SOCIETY, MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND, PUERTO RICAN LEGAL DEFENSE AND EDUCATION FUND, AND SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

INTEREST OF *AMICI CURIAE*

Amici curiae are organizations representing individuals throughout the nation who share a critical interest in desegregation of public school systems.[1]

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[1] The parties have consented to the filing of this brief. Copies of the letters of consent from the parties have been filed with the Clerk of the Court.

The *National Association for the Advancement of Colored People* ("NAACP") is a non-profit membership corporation with substantial numbers of members nationwide. One of the principal goals of the NAACP is to insure the educational, social and economic equality of minority group citizens. The NAACP has been at the forefront of school desegregation litigation since *Brown v. Board of Educ.*, 347 U.S. 483 (1954). The NAACP has chartered affiliates in the State of Georgia, including *amicus* DeKalb County, Georgia, Branch of the NAACP, and in all other states.

The *American Jewish Committee* ("AJC"), founded in 1906, seeks to protect the security and constitutional rights of Jews in America through the preservation of the rights of all Americans. AJC has been concerned with the inequities of segregated schooling since the late 1940s, when it sponsored research on the effects of *de jure* segregation that was relied upon by the *Brown* Court. *See Brown*, 347 U.S. at 411 n.11.

The *Children's Defense Fund* conducts research, public education and advocacy for America's children, especially its poor, minority and handicapped children. Quality of education is one of its primary concerns.

The *Fund for an Open Society*, founded in 1975, is a non-profit mortgage fund which seeks to promote integrated housing through lower cost mortgages to whites and minorities, and to help solve the problems of segregated schools by breaking down walls of residential segregation.

The *Mexican American Legal Defense and Educational Fund* ("MALDEF") is a national civil rights organization established in 1967 to secure, through litigation and education, the civil rights of Hispanics living in the United States. MALDEF currently represents Hispanics in 20 desegregation cases.

The *Puerto Rican Legal Defense and Education Fund*, which represents Latinos in several school desegregation cases, is a national civil rights organization dedicated to protecting and furthering the rights of Puerto Ricans and Latinos.

The *Southern Christian Leadership Conference* ("SCLC") is a national non-profit civil and human rights organization founded by the Rev. Martin Luther King, Jr. SCLC has chartered chapters and affiliates nationwide and long has been concerned with the inequities of all aspects of school segregation.

INTRODUCTION

Schools in the DeKalb County School System ("DCSS") are segregated by race and have been segregated by race since Reconstruction. Through at least the first 15 years following *Brown v. Board of Educ.*, 347 U.S. 483 (1954) ("*Brown I*"), DCSS intentionally maintained, under color of law, a segregated school system in violation of the Equal Protection Clause of the Fourteenth Amendment.

Notwithstanding judicial supervision and repeated orders directing DCSS to implement an effective plan to desegregate its schools, DCSS's schools have remained segregated to this day. The most recent record evidence reveals that more than half of all black students in the DeKalb County schools attend schools with black populations exceeding 90 percent (Pet. App. 4a). It is undisputed that DCSS continues to segregate its faculty and staff by race, with assignments reflecting the racial identification of its schools;[2] that it expends substantially more money and

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[2] Both courts below found that the DCSS has violated judicial desegregation orders by assigning black principals, teachers and staff to predominantly black schools (J.A. 226-231; Pet. App. 4a-5a, 17a; *id.* at 48a-59a; *see* J.A. 425, 530-35; 543-44; 745-48; 751-52; 837). Although blacks comprise approximately 30 percent of administrators systemwide, the percentage of black administrators in schools in which black student populations exceed 80 percent is 60 to 63 percent (J.A. 483, 530-35).

resources on educating white students than black students;[3] and that it places its more experienced and better educated teachers in identifiably white schools to a greater degree than in identifiably black schools.[4]

Recognizing that "[a]fter twenty years of court supervision, the DCSS continues to operate racially identifiable schools" (Pet. App. 24a), the court of appeals required DCSS to take meaningful steps to achieve the result mandated by the Equal Protection Clause – a desegregated school system. The court held that DCSS had a continuing constitutional duty "to gain and maintain a desegregated student population" (*id.* at 19a), and that it "may not shirk its constitutional duties by pointing to demographic shifts occurring prior to unitary status" (*id.* at 20a). The court further held that a school district such as DCSS, the schools of which were once segregated *de jure*, may not be released from judicial supervision until it has effectively desegregated its system by simultaneously maintaining racial equality for three consecutive years in the areas of operations identified in *Green v. County School Bd.*, 391 U.S. 430 (1968) – student assignment, faculty and staff assignment, transportation, extracurricular activities, and facilities (Pet. App. 24a).

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[3] The DCSS spends, on average, $341.00 more per student in predominantly white schools than in predominantly black schools (Pet. App. 6a; *id.* at 70a). This is, in the aggregate, a substantial sum considering that DCSS is populated by almost 80,000 students, 47 percent of whom are black.

[4] In majority white elementary schools, teachers have an average of 9.79 years of teaching experience; in majority black elementary schools, teachers have an average of 5.19 years of teaching experience. In majority white high schools, teachers have an average of 8.9 years of teaching experience; in majority black high schools, teachers have an average of 4.91 years of teaching experience. In majority white elementary schools, 75.76 percent of teachers have graduate degrees; in majority black elementary schools, 52.63 percent of teachers have graduate degrees. In majority white high schools, 76.05 percent of teachers have graduate degrees; in majority black high schools, 64.32 percent of teachers have graduate degrees (Pet. App. 5a-6a; *id.* at 65a-66a).

DCSS contends that, because the increasing segregation of its students occurred at about the same time that DeKalb County was experiencing a large increase in population, including an increase in black population centered in one part of the county, it cannot be required, under the Equal Protection Clause, to desegregate its schools unless it can be shown to have caused the demographic shift. DCSS further contends that desegregation in one of the six areas of school operations identified in *Green* would entitle it to removal of judicial supervision over that area even if its school system as a whole has remained segregated.

The proper resolution of these questions turns on application of the fundamental principles articulated in this Court's seminal desegregation decisions. In *Brown I*, the Court declared that segregation of black children "generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone," 347 U.S. at 494, and that "in the field of public education the doctrine of 'separate but equal' has no place" because "[s]eparate educational facilities are inherently unequal," *id.* at 495. The *Brown* Court was influenced by preliminary studies demonstrating that segregated education provides inferior opportunities to black students. *See id.* at 494 n.11. Extensive study of desegregation in the 37 years since *Brown* has produced a stable consensus among social scientists of the overwhelming value of desegregation and the danger of resegregation implicit in narrowing the ambit of judicial supervision of school systems such as DCSS. A Social Science Statement signed by more than 50 leading researchers demonstrating this consensus is appended to this Brief.

The constitutional offense identified in *Brown I* was a systematic exclusion of black students from the educational mainstream. In *Brown II*, the Court authorized the exercise of far-ranging equity powers to remedy that systematic discrimination and to dismantle *de jure* segregated school systems. *See*

Brown v. Board of Educ., 349 U.S. 294, 296 (1955). The Court did not suggest that residential segregation – a condition prevalent in American society then as well as now – would excuse a failure of a school system to rid itself of the segregation of students by race. Nor did the Court contemplate that a school district with a long history of legally-enforced segregation could sidestep judicial supervision prior to complete elimination of all aspects of racial discrimination from its schools. The positions advocated by DCSS are at odds with the principles underlying the *Brown* decisions that have guided this Court's equal protection jurisprudence for decades.

SUMMARY OF ARGUMENT

I.

Contrary to the premise underlying its argument, DCSS has never "implemented an effective plan to disestablish the former *de jure* dual school system" (Pet. Br. 20). The closing of DCSS's former *de jure* black schools in 1969 did not put an end to segregation in the DeKalb County schools. Moreover, the closure was accompanied by a "neighborhood" attendance plan and by other DCSS actions that, when demographics changed as they quickly did, invited the perpetuation of a blatantly segregated school system.

As this Court and other courts have noted, and as leading social scientists have found, residential segregation is often inextricably intertwined with school board actions that have the effect of establishing racially identifiable schools. Accordingly, as the Solicitor General has acknowledged, it may be difficult, if not impossible, in a given case to sort out precise causal elements from the interaction of residential segregation and school segregation. In any event, DCSS cannot point to demographic changes as an excuse for failing to fulfill its affirmative duty of implementing an effective desegregation plan. To the contrary, DCSS was required to take such changes

into account in fashioning a plan to eradicate racial segregation from its schools.

II.

Effective desegregation in each of the six areas of school operations identified in *Green* must be accomplished simultaneously for a period of at least three years before a former *de jure* segregated school system such as DCSS should be released from judicial supervision over any aspect of desegregation. DCSS's argument that a supervising court must relinquish jurisdiction one area at a time – with a renewed inquiry into a school district's compliance in any such area permitted only upon proof by the plaintiffs of a *new* act of intentional discrimination – has no support in the decisions of this Court.

The maintenance of a *de jure* segregated system is a constitutional wrong that infects the school system as a whole. Accordingly, this Court's desegregation decisions have properly structured relief on a systemwide basis. Moreover, as this Court and lower courts supervising desegregation plans have noted, the different areas of school system operations are interrelated, so that aspects of a desegregation plan addressed to one area may well affect the ability of the school district to achieve desegregation in other areas and in the system as a whole.

Under the approach espoused by DCSS and the district court, a school district could attain compliance in certain areas for relatively brief spans of time in the course of administration of a desegregation decree, and ultimately be discharged from court supervision despite its overall failure to achieve desegregation throughout the school system. This result is contrary to the central goal of remedying the systemwide harms caused by institutional segregation.

ARGUMENT

I. DCSS'S OWN INABILITY TO IMPLEMENT AN EFFECTIVE PLAN OF SCHOOL DESEGREGATION DURING A PERIOD OF INCREASING RESIDENTIAL SEGREGATION CANNOT BE INVOKED TO REMOVE JUDICIAL SUPERVISION OVER DCSS TO ENSURE THAT IT FULFILLS ITS CONSTITUTIONAL DUTY TO DESEGREGATE IN THE AREA OF STUDENT ASSIGNMENT.

The principal argument of DCSS proceeds from the faulty premise that it "already has implemented an effective plan to disestablish the former *de jure* dual school system" (Pet. Br. 20). The court of appeals expressly rejected this premise in concluding that "[a]fter twenty years of court supervision, the DCSS continues to operate racially identifiable schools" (Pet. App. 24a). Because this case thus involves a school district, formerly segregated *de jure*, that has *never* implemented an effective plan of desegregation, the argument that DCSS constructs on its flawed premise has no bearing on the Court's decision here.

The premise is flawed, to begin with, because the simple step of closing former *de jure* black schools in 1969 did not constitute an effective desegregation plan. As the court of appeals observed, "[f]or many years, the DCSS planned, contributed to, and directly caused racial segregation in its schools" (Pet. App. 23a). It would be naive to think that such an entrenched system could be uprooted overnight. This Court has recognized that the challenge of overcoming the long-term effects of *de jure* segregation is not one that can be satisfied by instant solutions. Thus, in *Green v. County School Bd.*, 391 U.S. 430 (1968), the Court described *Brown II* as "a call for the dismantling of well-entrenched dual systems," a call "tempered by an awareness that complex and multifaceted problems would arise which would require time and flexibility for a successful

resolution." 391 U.S. at 437. The Court went on:

> School boards . . . then operating state-compelled dual systems were nevertheless clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch.

Id. at 437-38. Here, DCSS failed to resolve the "complex and multifaceted problems" that arose upon implementation of its initial desegregation plan in 1969. More specifically, the closing of the former *de jure* black schools did not effectively abolish the dual system because it was accompanied by the institution of a "neighborhood" attendance policy that permitted the development and perpetuation of the "segregated school system" that, as the court of appeals said, DCSS operates today (Pet. App. 4a).[5]

DCSS instituted its "neighborhood" attendance policy in September 1969. At that time, only 5.6 percent of the overall student population was black. Nevertheless, two schools had a majority of black students in 1969 and three other schools were racially identifiable as black schools.[6] Even in the initial year

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[5] The facts set forth in the text that follows demonstrate that segregation in the DeKalb County schools continued from the very outset of the neighborhood plan in 1969. Whether segregation continued at that time or reemerged within one or two years following institution of the plan is, however, irrelevant. The court of appeals held that effective desegregation for "a period of not less than three years" is necessary in each area of school system operations (Pet. App. 14a), and no one contends that anything less than three years should constitute the minimum period of compliance. Even DCSS does not appear to assert that it achieved effective desegregation in the area of student assignment for a continuous three-year period at any point during the period it has been subject to judicial supervision.

[6] The student population of Terry Mill Elementary was 76.4 percent black and that of Stoneview Elementary was 51.2 percent black. In addition, 35 percent of the students at Lithonia High School and 28 percent of the

of the "neighborhood" attendance plan, the racial identity of these schools was virtually guaranteed by the substantial concentration of black faculty and staff in those schools – despite the overall paucity of black faculty and staff in DCSS.[7]

After DCSS had identified its schools by race using discriminatory faculty and staff assignments, segregation of student assignments by race quickly followed. In the first five years of the "neighborhood" attendance plan, racial segregation of students grew markedly in DeKalb County schools. By 1974, the overall student population was only 15 percent black, but in 12 elementary schools and two high schools the majority of students were black.[8] The trend of increasing segregation has continued to the point where 50 percent of all black students attend schools in which more than 90 percent of the students are black (Pet. App. 3a-4a). Five of the 22 DCSS high schools have student bodies that are more than 92 percent black (J.A. 505-08).

The first five years under the "neighborhood" attendance plan were characterized by actions on the part of DCSS that contributed to the perpetuation and exacerbation of the

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students at both Hooper Alexander Elementary and Jim Cherry Elementary were black (J.A. 505-08).

[7] In 1969, 6 percent of DCSS teachers were black. At Hooper Alexander Elementary, however, where 28 percent of the student body was black, 22 percent of the teachers were black. At Terry Mill Elementary – where 76.4 percent of students were black – 32 percent of teachers were black. In numerous schools where the student body was almost exclusively white, there were no black teachers (J.A. 548).

[8] These schools included Tilson (98.9 percent); Leslie J. Steele (98.7 percent); Gordon (97.4 percent); Terry Mill (97.2 percent); Toney (92.1 percent); Sky Haven (79.8 percent); Gresham Park (79.2 percent); Hooper Alexander (77.5 percent); Clifton (76.7 percent); Kelly Lane (75.5 percent); Flat Shoals (67.5 percent); Walker (60.3 percent); and Meadowview (57.9 percent) (J.A. 505-08).

segregation of students by race in the DeKalb County schools.[9] Thus, in 1976, the district court found that DCSS had drawn attendance zone lines in such a way as to increase segregation in some of its schools.[10] Between 1976 and 1985, DCSS cemented the segregated status of its schools: the number of schools in which at least 90 percent of the students were black increased from eight in 1976 to 18 in 1985 and the number of schools in which at least 50 percent of the students were black increased from 25 in 1976 to 47 in 1985 (J.A. 260-380).

Quite clearly, then, the "neighborhood" attendance plan never effectively desegregated DCSS schools. To the contrary, the plan had the effect of increasing racial segregation in the system over time to a startling degree.[11]

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[9] The claim by DCSS that the plaintiff class is somehow responsible for the segregative actions taken by DCSS because "respondents themselves took little or no initiative to insist on additional remedial efforts" (Pet. Br. 35), is consistent with DCSS's efforts to avoid taking responsibility for its discriminatory actions. The duty to obey the law rests with DCSS independent of any actions taken by respondents.

[10] The district court found that "the redrawing of elementary school lines in southwest DeKalb had some effect upon the perpetuation of a dual system in the county" (J.A. 89). The court further found that DCSS could not adequately explain certain attendance zone changes that had the effect of increasing segregation (J.A. 90-91). DCSS did not challenge these findings on appeal.

In addition, between 1969 and 1975, DCSS opened five of the eight elementary schools where currently at least 95 percent of the students are white; in 1975, these five schools had a total of four black students (J.A. 272, 311, 316, 337, 353). During that period, DCSS opened three of the 18 schools in which more than 90 percent of the students are black (J.A. 274, 282, 333). Of 14 elementary schools opened by DCSS during that period, eight have students bodies that are either almost completely white or almost completely black.

[11] Other programs instituted by DCSS, including its magnet school program and its "majority to minority" ("M-to-M") transfer program, have not succeeded in effectively desegregating student assignments. The magnet

The effect of the neighborhood attendance plan in perpetuating segregation was exacerbated by demographic changes in DeKalb County, particularly the growth in the number of black residents, who were increasingly concentrated in one end of the county. DCSS, proceeding on its flawed premise that it eliminated all the effects of decades of *de jure* segregation by a single blow in 1969, would make of the resulting increase in residential segregation in the county a reason for the continued segregation of the county schools for which it is not accountable. But that argument falls with the flawed premise. DCSS, never having achieved desegregation, is no different from any school district that has had to confront the unhappy fact of residential racial segregation in moving from a school system in which by legal command students were segregated by race to a unitary school system.[12]

Certainly it is beyond question that a school district whose students were previously segregated by law does not create a unitary school system merely by providing for a neighborhood attendance plan when it knows that the neighborhoods from which its several schools will draw students are identifiably black or white. In *Monroe v. Board of Comm'rs of the City of Jackson*,

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school program is ineffective, involving few students (J.A. 594). The M-to-M program results in black students transferring to schools where white students are in the majority; white students do not transfer to schools where they are in the minority. *Cf. Monroe v. Board of Comm'rs of the City of Jackson*, 391 U.S. 450, 459 (1968). Only 4 percent of elementary students and 9 percent of high school students utilize the M-to-M program, and those students are almost exclusively black (J.A. 593).

[12] DeKalb County is, and has been, residentially segregated by race. As Judge O'Kelly, the district judge below, observed in a case involving the Atlanta metropolitan area as a whole, "it is obvious to the most casual observer that integrated housing patterns do not prevail in the Atlanta metropolitan area. It is also patently obvious that there is an interface between housing patterns and school populations." *Armour v. Nix*, No. 16,708, slip op. at 32 (N.D. Ga. Sept. 24, 1979) (three-judge court), *aff'd mem.*, 446 U.S. 930 (1980).

391 U.S. 450, 455-57 (1968), a majority of black residents lived in one area and the Court held that a plan based on "natural boundaries" was "plainly inadequate":

> Because the homes of Negro children are concentrated in certain areas of the city, a plan of unitary zoning, even if prepared without consideration of race, will result in a concentration of Negro children in the zones of heretofore "Negro" schools and white children in the zones of heretofore "white" schools.

Id. at 458 (quoting lower court); *see Davis v. Board of School Comm'rs of Mobile County*, 402 U.S. 33, 37 (1971) ("'neighborhood school zoning'. . . is not the only constitutionally permissible remedy; nor is it *per se* adequate to meet the remedial responsibilities of local boards"); *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 30 (1971) ("[d]esegregation plans cannot be limited to the walk-in school"). The simple expedient of a "neighborhood" attendance plan, like a "freedom-of-choice" plan, is not a sacred talisman; "if it fails to undo segregation, other means must be used to achieve this end." *Green*, 391 U.S. at 440 (citation omitted).[13]

Moreover, this Court has recognized from the outset that changes in demographic patterns are factors that an effective desegregation plan must contend with, not an excuse for continued segregation. In *Swann*, the Court pointed out that

> [the] process [of converting from the state-enforced discrimination of racially separate school systems] has been rendered more difficult by changes since 1954 in the structure and patterns of communities, the growth of student populations, movement of families, and other changes, some

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[13] The mere fact that a plan may be racially neutral does not establish that it is effective; more race-conscious remedial plans may be required. *Swann*, 402 U.S. at 22-25.

of which had marked impact on school planning, sometimes neutralizing or negating remedial action before it was fully implemented.

402 U.S. at 14 (footnote omitted). The Court thus made clear that the desegregating school district must deal not just with demographics as they were when it began to desegregate but also with changing demographics such as those the DeKalb County district and other districts have experienced. The changing demographics do not absolve a school board of its obligation to dismantle a racially discriminatory school system; on the contrary, such changes must be taken into consideration in fashioning an effective desegregation plan.

The mere fact that demographic changes may, on one level, be attributable to voluntary decisions on the part of families is of no moment. In *Green*, the perpetuation of the dual system resulted from parents' voluntary enrollment decisions under the school board's "freedom-of-choice" plan. Nevertheless, the Court refused to relieve the school board of its constitutional duty, noting that "[r]ather than further the dismantling of the dual system, the plan has operated simply to burden children and their parents with a responsibility which *Brown II* placed squarely on the School Board." 391 U.S. at 441-42.

As this Court has recognized, school board actions and residential segregation are often inextricably intertwined. Thus, the Court noted in *Swann* that school board actions that influence the racial composition of the student body may themselves "promote segregated residential patterns which . . . lock the school system into the mold of separation of the races." 402 U.S. at 21. This is the case because "a family looking for housing is concerned with the schools that its children will attend [and for] many families the racial composition of a

school is among its most important qualities or characteristics."[14] A Gallup poll taken in 1990 revealed that almost half the population views racial composition of the student body of prospective schools to be "very important" or "fairly important" in the choice of a local school.[15] "Segregated schools . . . make it possible for agents and consumers to sort out neighborhoods in terms of race, and guide housing decisions accordingly."[16]

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[14] Taeuber, *Housing, Schools and Incremental Segregative Effects*, in 441 ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE 157 (1979).

[15] Elam, *The 22nd Annual Gallup Poll of the Public's Attitudes Toward the Public Schools*, PHI DELTA KAPPAN, September 1990, at 44-45. Gallup opinion polls consistently show that high numbers of white Southern parents object to sending their children to schools with student bodies that are 50 percent black. *See* GALLUP, THE GALLUP POLL: PUBLIC OPINION, 1978 at 217 (1979); GALLUP, THE GALLUP POLL: 1935-1971 at 2248 (1972).

[16] Pearce, *Deciphering the Dynamics of Segregation: The Role of Schools in the Housing Choice Process*, 13 THE URBAN REVIEW 85, 86 (1981); *see* HELPER, RACIAL POLICIES AND PRACTICES OF REAL ESTATE BROKERS 80 (1969) ("People fear that the schools will become undesirable – this, say respondents, is the *main* reason white people do not want Negroes to come to their area") (emphasis in original). On the other hand, a stable desegregated school system can diminish residential segregation over time. When a school district is desegregated, there is no pressure for whites with young children to move out of racially mixed neighborhoods and it is less likely that real estate agents will engage in racial steering to segregate neighborhoods. *See* I ASSESSMENT OF CURRENT KNOWLEDGE ABOUT THE EFFECTIVENESS OF SCHOOL DESEGREGATION STRATEGIES 51-60 (Hawley, *et al.*, ed. 1981). Once schools are no longer identified as white or black, racial barriers in housing are lowered. *See* PEARCE, BREAKING DOWN BARRIERS: NEW EVIDENCE ON THE IMPACT OF METROPOLITAN DESEGREGATION IN HOUSING PATTERNS (1980); ORFIELD, TOWARD A STRATEGY FOR URBAN INTEGRATION (1981); PEARCE, CRAIN & FARLEY, LESSONS NOT LOST: THE IMPACT OF SCHOOL DESEGREGATION ON THE RACIAL ECOLOGY OF LARGE AMERICAN CENTRAL CITIES (1990) (study appended to Brief of the American Jewish Committee, *et al.*, as *Amici Curiae* in *Board of Educ. v. Dowell*, 111 S. Ct. 630 (1990)).

Residential segregation can be exacerbated not only by segregation in student assignment but also by other school board actions, such as racial segregation in faculty and staff assignment, that have the effect of establishing racially identifiable schools:

> [T]he use of mobile classrooms, the drafting of student transfer policies, the transportation of students, and the assignment of faculty and staff, on racially identifiable bases, have the clear effect of earmarking schools according to their racial composition, and this, in turn, together with the elements of student assignment and school construction, may have a profound reciprocal effect on the racial composition of residential neighborhoods within a metropolitan area, thereby causing further racial concentration within the schools.

Keyes v. School Dist. No. 1, Denver, Colo., 413 U.S. 189, 202 (1973).[17]

Many of the lower courts that have administered desegregation decrees have agreed with these observations.[18] As one such court has noted: "[e]mployment, education and housing discrimination foster each other in the United States;

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[17] Social scientists agree that such actions by a school district cause residential segregation. *See, e.g.*, Orfield, *School Segregation and Residential Segregation: A Social Science Statement*, in SCHOOL DESEGREGATION: PAST, PRESENT AND FUTURE 235-36 (1980); ORFIELD, MUST WE BUS? SEGREGATED SCHOOLS AND NATIONAL POLICY 322, 369 (1978) (schools in Indianapolis and Cleveland "racially labeled" by faculty assignments); UNITED STATES COMMISSION ON CIVIL RIGHTS, RACIAL ISOLATION IN THE PUBLIC SCHOOLS 67 (1967); Taeuber, *Housing, Schools, and Incremental Segregative Effects*, 441 ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE 157, 164 (1979).

[18] The Court has often taken into account the practical experience of the lower courts in this area. *See, e.g., Milliken v. Bradley*, 433 U.S. 267, 283-87 (1977) ("*Milliken II*"); *Swann*, 402 U.S. at 6.

the effects of one are causative of the others; they are interdependent phenomena."[19] For this reason, as the Solicitor General has pointed out, attempting to parse precise causal elements from the interaction of residential segregation and school segregation would likely prove to be a futile exercise.[20] In any event, the question whether particular actions by DCSS "caused" residential segregation in DeKalb County is not before the Court for the simple reason that DCSS has never implemented an effective desegregation plan.

This case is therefore functionally identical to one in which a school board must dismantle a former *de jure* segregated

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[19] *Bradley v. School Bd. of the City of Richmond*, 338 F. Supp. 67, 195 (E.D. Va. 1972), *rev'd on other grounds*, 462 F.2d 1058 (4th Cir. 1972), *aff'd by an equally divided Court sub nom. School Bd. of Richmond, Va. v. State Bd. of Educ. of Va.*, 412 U.S. 92 (1973); *Armour v. Nix*, No. 16,708, slip op. at 15 (Sept. 24, 1979) ("[i]t need not be reiterated that racial designation of the school in a given area tends to designate the race of the neighborhood"), *aff'd mem.*, 446 U.S. 930 (1980); *Penick v. Columbus Bd. of Educ.*, 429 F. Supp. 229, 259 (S.D. Ohio 1977) (the interaction of student assignments and residential choice is a "segregative snowball"), *aff'd in part and remanded in part*, 443 U.S. 449 (1979); *United States v. Yonkers Bd. of Educ.*, 624 F. Supp. 1276, 1526 (S.D.N.Y. 1985), *aff'd*, 837 F.2d 1181 (2d Cir. 1987), *cert. denied*, 486 U.S. 1055 (1988); *United States v. Board of School Comm'ners*, 573 F.2d 400, 408-09 n.20 (7th Cir. 1978); *NAACP v. Lansing Bd. of Educ.*, 559 F.2d 1042, 1049 n.9 (6th Cir.), *cert. denied*, 434 U.S. 997 (1977); *Evans v. Buchanan*, 393 F. Supp. 428, 436-37 (D. Del.), *aff'd*, 423 U.S. 963 (1975); *Hart v. Community School Bd. of Brooklyn*, 383 F. Supp. 699, 706 (E.D.N.Y. 1974) (Weinstein, J.), *aff'd*, 512 F.2d 37 (2d Cir. 1975); *Morgan v. Hennigan*, 379 F. Supp. 410, 470 (D. Mass.), *aff'd sub nom. Morgan v. Kerrigan*, 509 F.2d 580 (1st Cir. 1974), *cert. denied*, 421 U.S. 963 (1975); *Armstrong v. O'Connell*, 463 F. Supp. 1295, 1308 (E.D. Wisc. 1979).

[20] *See* U.S. Brief 14 n.7 (citation omitted) ("an inquiry in every desegregation case into the 'unknown and perhaps unknowable factors' that cause residential imbalances promises the daunting, often unedifying, and – for many school districts – prohibitively expensive spectacle of a parade of social science experts"). Although the United States seems to be concerned only with the costs of such an inquiry to school districts, *amici* submit that the burden of such an inquiry on plaintiffs would be even more unbearable.

system in a community that is, from the outset, characterized by residential segregation. And as we have seen and as must be apparent, segregation of neighborhoods is a problem to be confronted, not a justification for continued segregation of the schools.[21]

The decision in *Pasadena City Bd. of Educ. v. Spangler*, 427 U.S. 424 (1976), is not to the contrary. In *Spangler*, the Court struck down a condition imposed by the district court that "at least during my lifetime there would be no majority of any minority in any school in Pasadena," *id.* at 433, a condition that required "annual readjustment of attendance zones," *id.* at 435. Chief Justice Rehnquist, the author of the Court's opinion in *Spangler*, subsequently noted that the essential objection of the Court to the district court's order was its "obligation to annually reassign students." *Vetterli v. United States Dist. Court*, 435 U.S. 1304, 1308 (1978) (Rehnquist, Circuit Justice). Here, of course, neither the court of appeals nor plaintiffs seek to impose any such obligation on DCSS. Rather, plaintiffs here seek merely the implementation of an effective desegregation plan, a step that DCSS, more than 37 years after *Brown*, has not yet proved willing or able to take. *Spangler*, condemning a judicially mandated kind of fine-tuning that is remote from the facts of this case, does not relieve DCSS of its affirmative duty finally to implement an effective plan to eliminate racial segregation in its schools.[22]

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[21] The Solicitor General agrees with this proposition. *See* U.S. Br. 14 n.7 (citation omitted) ("existing residential disparities should be taken into account 'in fashioning a remedy' at the outset of a case to desegregate a school system").

[22] Year-by-year adjustment of racial composition is not warranted "once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system." *Spangler*, 427 U.S. at 436 (citation omitted). Here, however, the DCSS has never "implemented a racially neutral attendance pattern," as *Spangler* requires, and the affirmative duty to desegregate has not been discharged.

At bottom, the harms sought to be remedied by *Brown* are identical whether existing segregation results from direct operation of law or from the continued failure of a school system to overcome past discrimination. *See Columbus Bd. of Educ. v. Penick*, 443 U.S. 449, 456-57 (1979); *Keyes*, 413 U.S. at 210-11; *Dayton Bd. of Educ. v. Brinkman*, 433 U.S. 406, 420 (1977). In either case, black students are stigmatized by racially separate and thus inferior education.[23] The fact that substantial time has passed since *Brown* should heighten, rather than lessen, the duties placed upon DCSS to comply with the Constitution. The obligation of DCSS, "which ha[s] not been satisfied, [is] to 'come forward with a plan that promises realistically to work . . . *now* . . . until it is clear that state-imposed segregation has been completely removed.'" *Penick*, 443 U.S. at 459 (emphasis in original; citation omitted); *see Green*, 391 U.S. at 437-38.[24]

See id. at 437.

[23] *See generally* WEINBERG, MINORITY STUDENTS: A RESEARCH APPRAISAL 159 (1977); Epps, *The Impact of School Desegregation on the Self-Evaluation and Achievement Orientation of Minority Children*, 42 LAW AND CONTEMPORARY PROBLEMS 57 (1978); Coleman, *New Incentives for Desegregation*, 7 HUMAN RIGHTS 10, 15 (1978) (critical of desegregation remedies but recognizing that it is "essential" that "if a child is in an all-black school, it should be because he wants to be there and his parents want him to be there, *not* because it is the only school that he has a reasonable chance to attend") (emphasis in original).

[24] Of course, compliance with the Constitution could require DCSS to take difficult actions that "may be administratively awkward, inconvenient, and even bizarre in some situations and may impose burdens on some." *Swann*, 402 U.S. at 28. The Court should not be reluctant to insist upon full compliance with *Brown* merely because of the difficulties inherent in some remedies that may be appropriate. *See generally Cooper v. Aaron*, 358 U.S. 1 (1958).

II. EFFECTIVE DESEGREGATION MUST BE ACCOMPLISHED SIMULTANEOUSLY FOR A SUBSTANTIAL PERIOD OF YEARS IN ALL MAJOR AREAS OF SCHOOL SYSTEM OPERATIONS BEFORE A FORMER *DE JURE* SEGREGATED SCHOOL SYSTEM SUCH AS DCSS SHOULD BE RELEASED FROM JUDICIAL SUPERVISION.

DCSS argues that it should be permitted to dismantle its segregated school system one piece at a time over more than two decades, sequentially foreclosing judicial supervision, without regard to whether it is implementing an effective plan for desegregating the school system as a whole. If the Court correctly resolves the first question presented, DCSS's claim will be inessential to an affirmance of the court of appeals and need not be resolved. For what we have tried to demonstrate in our discussion of the first question is that DCSS has never achieved desegregation in respect of student assignments – far from it. And despite DCSS's contrary suggestion (Pet. Br. 20), the court of appeals did not believe that it had. There is thus no need to rely on DCSS's admitted continuation of discriminatory faculty and staff assignments and allocation of resources as a reason for continuing judicial supervision of student assignments. But, if there were any such need, it is clear from this Court's decisions in *Green* and other cases that a school system is subject to judicial supervision until it completes the desegregation of its schools in all the respects listed in *Green*.

The modern school system is "made up of interrelated factors."[25] Recognizing this fact, the Court in *Green* identified at least six major areas of school system operations –

[25] Purkey & Smith, *Effective Schools: A Review*, 83(4) ELEMENTARY SCHOOL JOURNAL 440, 441 (1986); *see* Bryk, Lee & Smith, *High School Organization and Its Effects on Teachers and Students*, in 1 CHOICE AND CONTROL IN AMERICAN EDUCATION 139 (Clune & Witte eds. 1990).

assignment of students, of faculty and of staff, transportation, extracurricular activities, and facilities – that serve as important indicia of a segregated system. *See Swann*, 402 U.S. at 18. Because of the interplay of these factors, the Court's focus, in reviewing efforts by school boards to overcome past segregation, has been on whether the school board in question has satisfied its "affirmative duty to desegregate the entire *system*." *Keyes*, 413 U.S. at 213 (emphasis added), to produce a "public school *system* wholly free from racial discrimination." *Milliken II*, 433 U.S. at 283 (emphasis added).[26]

This systemwide focus is critical to the success of the desegregation process.[27] A systemwide focus is also important to righting the systemwide wrong of illegal discrimination. "[W]here, as here, a constitutional violation has been found, the remedy does not exceed the violation if the remedy is tailored to cure the *condition* that offends the Constitution." *Milliken II*, 433 U.S. at 282 (emphasis in original; citation omitted). Here,

[26] The emphasis on establishing a desegregated *system* has pervaded this Court's desegregation decisions from the outset. *See Brown II*, 349 U.S. at 301 (district must "effectuate a transition to a racially nondiscriminatory school *system*") (emphasis added); *Green*, 391 U.S. at 436 ("transition to a unitary, non-racial *system* of public education was and is the ultimate end") (emphasis added); *Raney v. Board of Educ.*, 391 U.S. 443, 449 (1968) (goal is a "'non-racially operated school *system*'") (emphasis added, citation omitted); *Alexander v. Holmes County Bd. of Educ.*, 396 U.S. 19, 21 (1969) (goal must be "a totally unitary school *system*") (emphasis added); *Swann*, 402 U.S. at 22 ("remedy commanded was to dismantle dual school *systems*") (emphasis added).

[27] *See, e.g.*, FOREHAND & RAGOSTA, A HANDBOOK FOR INTEGRATED SCHOOLING 11-12 (Washington, D.C.: Dep't of Health, Education and Welfare 1976); Sheehan, *A Study of Attitude Changes in Desegregated Intermediate Schools*, 53 SOCIOLOGY OF EDUCATION 51, 59 (1980); Scott & McPartland, *Desegregation as National Policy: Correlates of Racial Attitudes*, 19 AMERICAN EDUCATIONAL RESEARCH JOURNAL 397-414 (1986); Pettigrew, Useem, Normand & Smith, *Busing: A Review of the Evidence*, in THE GREAT SCHOOL BUS CONTROVERSY 148 (N. Mills ed. 1973).

as in *Milliken II*, the "condition" offending the Constitution is DCSS's system of *de jure* segregation, which infected the school system as a whole. It is thus essential that, in fashioning a remedy and evaluating its effectiveness, the supervising court must focus on the school system in its entirety and on all its constituent elements. *See Dayton Bd. of Educ. v. Brinkman*, 433 U.S. at 420; *Milliken II*, 433 U.S. at 282-83.

The Court's decisions demonstrate that the Constitution demands attainment of a desegregated school system as a whole, and maintenance of that desegregated system for a substantial period of years,[28] before a school district may be released from judicial supervision. For example, in *United States v. Montgomery County Bd. of Educ.*, 395 U.S. 225, 231-32 (1969), the Court noted that desegregation of faculty and staff is "a goal that we have recognized to be an important aspect of the basic task of achieving a public school system wholly free from racial discrimination." In *Milliken II*, the Court stressed that "discriminatory student assignment policies can themselves manifest and breed other inequalities built into a dual system founded on racial discrimination." 433 U.S. at 283. Similarly, the court in *Bradley v. School Bd. of the City of Richmond, Virginia*, 382 U.S. 103, 105 (1965), rejected the suggestion that there was no connection "between faculty allocation on an alleged racial basis and the adequacy of the desegregation plans."

Recently, in *Board of Educ. of Oklahoma City Public Schools v. Dowell*, 111 S. Ct. 630 (1991), this Court remanded the case to the district court for a determination whether the school board had made a sufficient showing of good faith compliance

[28] It is common ground that, in order to assure that a school district's compliance with the Constitution promises to be permanent, the six *Green* factors must be satisfied for a substantial period of time – at least three years – before a supervising court may relinquish jurisdiction over the school district (Pet. App. 14a; U.S. Brief 11 n.6 (three-year period "is the minimum necessary to ensure the school district's rehabilitation")).

with the desegregation decree. In so doing, the Court directed the district court, "[i]n considering whether the vestiges of *de jure* segregation had been eliminated as far as practicable . . . [to] look not only at student assignments, but 'to every facet of school operations – faculty, staff, transportation, extracurricular activities and facilities.'" *Id.* at 638, *quoting Green*, 391 U.S. at 435. In short, this Court's cases recognize that effective desegregation must take place within a school system as a whole and that this goal cannot be accomplished if judicial supervision is foreclosed in an incremental manner with respect to each specific *Green* factor.

The district courts, which have gained immeasurable practical experience in the course of administering desegregation decrees, have accordingly recognized that it would be nonsensical to permit isolated *seriatim* satisfaction of the *Green* factors. "[T]he components of a school desegregation plan are interdependent upon, and interact with, one another, so that changes with respect to one component may impinge upon the success or failure of another."[29] Even those lower courts that have remarked that school districts should be permitted to obtain gradual release from judicial supervision have themselves been unable to structure relief in an incremental manner.[30]

[29] *Vaughns v. Board of Educ. of Prince George's County*, 742 F. Supp. 1275, 1291 (D. Md. 1990); *see United States v. Charleston County School Dist.*, 738 F. Supp. 1513, 1537 (D.S.C. 1990); *United States v. State of Mississippi*, 725 F. Supp. 307, 312 (N.D. Miss. 1989); *Little Rock School Dist. v. Pulaski City Special School Dist.*, 716 F. Supp. 1162, 1171 (E.D. Ark. 1989).

[30] The decision of the Fifth Circuit in *United States v. Overton*, 834 F.2d 1171 (1987), contains *dicta* approving an "incremental" approach, but the question in that case was whether judicial supervision may be maintained when *all Green* factors were satisfied but future intentional discrimination could occur, an entirely different question that was resolved by this Court in *Dowell*. *See Overton*, 834 F.2d at 1177. In *Keyes v. School Dist. No. 1, Denver, Colo.*, 895 F.2d 659 (10th Cir. 1990), *cert. denied*, 111 S. Ct. 951 (1991), the court stated in *dicta* that a school district "may be declared

DCSS's reliance on *Spangler* is misplaced. In *Spangler*, it was undisputed that the school board's initial implementation of a court-approved plan had attained the objective of a racially-neutral attendance pattern. In these circumstances, the Court held that the district court could not engage in fine-tuning the remedy by requiring the school board "to rearrange its attendance zones each year so as to ensure that the social mix desired by the court was maintained in perpetuity." 427 U.S. at 436. Here, on the other hand, the court of appeals has not tinkered with the details of an effective plan; rather, it has ordered DCSS, which we submit never effectively desegregated student assignments and which undisputedly has adhered to segregative policies in related areas of school system operations, to take steps to remedy the pervasive segregation that still exists in its schools.[31]

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unitary in some respects but not others" but the court did not apply that standard because the school district in question was not "unitary" in any respect. *See id.* at 667. In *Morgan v. Nucci*, 831 F.2d 313 (1st Cir. 1987), the court similarly noted its approval of the "incremental unitariness" concept but was unable, on the record before it, to make a finding of "unitariness" as to *any* element of the school district's operations. *See id.* at 333; *see also Morgan v. Burke*, 926 F.2d 86, 92 (1st Cir. 1991). So far as we are aware, therefore, no court of appeals has actually upheld an "incremental unitariness" determination. This strongly suggests that the "incremental unitariness" approach is unworkable as a tool to guide the supervision of desegregation remedies by the lower courts.

The district court in this case realized the unworkability of the theory advanced by DCSS at a point in time when DCSS framed a related argument in a less subtle manner (Pet. App. 54a):

> Defendants argue that they achieved [desegregation in the area of faculty assignment] in every school at some point in time over the course of this case; therefore, it has been relieved of its constitutional burden. It would be ludicrous for this court to accept such an argument.

[31] The Court in *Spangler* does not appear to have considered the interrelationship, noted in other cases, between the various areas of school system operations. *See supra*, pp. 22-24. Nonetheless, there is a fun-

Amici submit that addressing the interrelated factors on a systemwide basis is the only effective means of curing the constitutional violation. In this case, for example, while DCSS contends that supervision over student assignments should be terminated, it is undisputed that the schools that are identifiably black are educationally inferior to identifiably white schools in several objective manifestations – black schools are staffed by teachers with less experience and less graduate education than identifiably white schools, and DCSS spends substantially less money to educate black students than white students.[32] As the court of appeals correctly pointed out, once DCSS finally complies with its responsibility of desegregating student as-

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damental distinction between a court's open-ended intrusion on the prerogatives of local school authorities after the successful implementation of a desegregation remedy in one area, as in *Spangler*, and a court's continuing supervision over all aspects of a school system in which blatant segregation concededly persists, which is the situation here.

[32] In a disclosure that is telling and distressing in equal measure, the DCSS defends the fact that it routinely spends substantially less money educating black students by claiming that the larger schools in which it places black students are "more efficient" – fewer teachers, administrators, and other staff are required to educate a greater number of black students – and by the fact that it permits assignment of more experienced teachers earning higher salaries to predominantly white schools (Pet. Br. 34 n.27). *Amici* are dismayed that a governmental entity entrusted with educating children would advocate higher faculty-student ratios and assignment of less experienced teachers in identifiably black schools on the basis of "efficiency" – a criterion that DCSS apparently finds relevant for its black students but not for its white students. Schools are society's primary means of providing a generation with the basic skills necessary to negotiate an increasingly complex world. *See Brown I*, 347 U.S. at 493. Efficiencies of scale provide no justification for a racially discriminatory allocation of educational resources. *See* I ASSESSMENT OF CURRENT KNOWLEDGE ABOUT THE EFFECTIVENESS OF SCHOOL DESEGREGATION STRATEGIES 85 (Hawley, *et al.*, eds. 1981).

signments, "most schools will no longer be racially identifiable and the DCSS will be unable to distribute resources in a racially imbalanced fashion" (Pet. App. 23a).

On the other hand, acceptance of DCSS's argument that a supervising court must relinquish jurisdiction one area at a time would impede effective supervision of desegregation decrees. Under that approach, as DCSS itself recognizes (Pet. Br. 29-30 n.24), the supervising court could not inquire into a school district's compliance in any area found to be "unitary" unless the plaintiffs were able to satisfy the difficult burden of proving a new event of intentional discrimination. As shown above, this result has no support in the decisions of this Court.[33]

The promise of *Brown* is an integrated school *system*, not merely a school district that has complied with the Constitution for a brief moment as to a single element of its operations. The continuing constitutional violation that mandates judicial supervision of DCSS is systemwide and pervasive in nature. The systemwide nature of the violation requires that the remedy be implemented on a systemwide basis. As courts supervising school systems have recognized, all elements of a school system

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[33] At all events, there is no support for DCSS's assertion that judicial supervision over a particular area that has been found to have been desegregated must cease completely, as if the entire school system had been found to be desegregated. If the Court decides not to require simultaneous satisfaction of all *Green* factors, it should hold that a showing less than a new incident of intentional discrimination in the particular area found to have been desegregated would suffice to reopen active judicial supervision in that area. In its decision containing *dicta* in favor of DCSS's approach, the First Circuit suggested that it may be inappropriate for all judicial supervision to cease over the area found to be "unitary." *Morgan*, 831 F.2d at 326 n.19 ("if unforeseen circumstances should ever necessitate a return trip to federal court by school plaintiffs, we note without deciding the possibility that the history of this litigation might militate for some modification of plaintiffs' evidentiary burden"); *see also Raney*, 391 U.S. at 449 ("the better course would be to retain jurisdiction until it is clear that disestablishment has been achieved").

– elements that are reflected in the *Green* factors – are inescapably intertwined and cannot be meaningfully separated. Narrowing the focus of permissible judicial intervention in the manner proposed by DCSS would provide insufficient assurance that effective desegregation has been achieved and would provide insufficient protection against resegregation. The Court should resist the efforts of DCSS to shift the burden from those found responsible for past discrimination to the innocent parties attempting to end segregation in public education.

CONCLUSION

The judgment of the court of appeals should be affirmed.

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APPENDIX

APPENDIX

SCHOOL DESEGREGATION: A SOCIAL SCIENCE STATEMENT

June 1991

When *Brown v. Board of Education* was decided in 1954, research on the effects of school desegregation was in its infancy. Segregation had been so rigidly enforced in schools throughout the country that the evidence which existed could speak only to its harmfulness.[1] Since so few children had experienced integrated education, little about its effects could be known. In the thirty-seven years since *Brown*, the landscape of American education has changed dramatically. The insistence of this court on equal protection of the laws, combined with principles of federalism, has allowed for the adoption of a multitude of desegregation plans tailored to local conditions. Children across the United States have been given the chance to attend a variety of desegregated schools, and the effects upon them and their communities have been the subject of careful study. By and large, however, the results of these studies have not entered the public debate over the merits of desegregation. Thus, findings which could be of use to judicial

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[1] *See Brown v. Board of Education*, quoting the Kansas lower court:

> Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a [racially] integrated school system.

347 U.S. at 494. *See also infra* n.8 for citations to social science literature documenting the effects of segregation.

and political deliberation are often overlooked. This statement reflects the judgment of the undersigned researchers.

Social science findings cannot substitute for an informed understanding of the legal and philosophical principles upon which this nation is built. No study can "settle" the great debates on equity and fairness that should and do take place in our democracy. However, much of what is now known by social science can establish a factual basis for those debates. This statement reports findings upon which there is substantial scholarly evidence.

Our overall conclusion reaffirms an observation first made in Gunnar Myrdal's seminal study of race in the United States: the separate threads of social life are bound together by a process of cumulative causation.[2] Whether the subject is the relationship between housing and school segregation, the conditions of successful desegregation, or the encouragement of educational reform, all findings point to the sensitivity of one factor to changes in another. Thus, desegregation in student assignment cannot be understood in isolation from changes in the curriculum, the adjustments of teachers and administrators, the reaction in the community, the changes in housing patterns, or the consequences of past segregation. Segregation of schools is reinforced by many other aspects of society and the process of desegregation has many ramifications outside the schoolhouse.

Our statement is divided into four parts. Part I describes some of the linkages between school segregation, housing segregation, and demographic change. Part II describes what is known about the overall effects of desegregation. Part III discusses some of the elements of successful desegregation, both

[2] G. MYRDAL, AN AMERICAN DILEMMA (New York: Harper, 1944), p. 77.

on the school and the district level. Part IV considers the linkages between educational reform and desegregation.

I: School Desegregation and Demographic Change

School segregation is closely related to residential segregation. Where one lives will often determine where one's children go to school. In discussions of school desegregation patterns there is often a perception that housing patterns radically limit school desegregation; that desegregation is hostage to demographic change. This view argues that housing choices are somehow independent of school choice, governmental actions, or school district policies; and that therefore housing choices affect schools and limit desegregation policies, but schools cannot affect housing. If it were impossible for school plans to cope with inexorable demographic changes, there would be little hope for lasting desegregation.

Scholars have known for some time, however, that the relationship between housing choice and school choice is actually interdependent.[3] While school district policy is certainly not the only cause of changes in the housing market, choices that school districts make about segregation or desegregation are significant. Not only do they affect the level of segregation within the district, they can also affect housing choices. School desegregation plans may either accelerate existing patterns of demographic change or may increase stability.

Three recent studies have found that the level of desegregation in school districts is strongly related to the level

[3] *See* "Appendix to Brief for Respondents -- School Segregation and Residential Segregation: A Social Science Statement," *Columbus Bd. of Educ. v. Penick*, 443 U.S. 449 (1979), for a more detailed treatment of this relationship. This section of our statement summarizes the earlier statement but deals mostly with new research from the years after 1979.

of segregation in housing. Researchers in a 1984 study found that school desegregation between 1968-1973 doubled the rate of housing desegregation in the 1970's in 25 central cities with at least 100,000 blacks in 1980. Apart from school desegregation, only growth in the size of the city contributed significantly to housing desegregation. Interestingly enough, declines in housing segregation in the sixties did not result in declines in school segregation in the seventies.[4] That study suggested, in other words, that the effects of schools on demography might be greater than the impact of demographic changes on schools.

A more recent study of 960 school districts found that segregation measures for school districts usually dropped by more than 50 points when desegregation plans were implemented. Segregation scores for metropolitan areas in the United States dropped by about 10 points on average during the 1970's. During the decade that urban school integration increased the national levels of urban residential segregation fell.[5] A third study found that cities with metropolitan-wide school desegregation experienced substantially increased housing integration, an effect that was evident in districts of all sizes and in all regions of the country. Moreover, the desegregative effects on housing continued over time; that is, the districts with

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[4] D. PEARCE, R. CRAIN, & R. FARLEY, LESSONS NOT LOST: THE IMPACT OF SCHOOL DESEGREGATION ON THE RACIAL ECOLOGY OF LARGE AMERICAN CENTRAL CITIES (paper presented at the American Educational Research Association Annual Meeting, New Orleans, April 1984; at the American Sociological Association Meetings, San Antonio, Texas, August 1984; and appended to the Brief of the American Jewish Committee as *Amicus Curiae* in *Board of Educ. v. Dowell*, 111 S. Ct. 630 (1990)).

[5] K. Taeuber, *Desegregation of Public School Districts: Persistence and Change*, PHI DELTA KAPPAN (September 1990), p. 18-24. Segregation levels here were measured by the dissimilarity index, a commonly used measure of desegregation, with 0 representing no segregation and 100 representing complete segregation.

the most years of desegregated schools had the lowest levels of housing segregation as well.[6]

The influence of school segregation on housing comes about through the effect of segregated schools on the housing choice process. Districts with and without school desegregation have very different dynamics in their patterns of housing choice. Schools can influence housing choice by their decisions to create or to eliminate racially identifiable schools. Such schools, which can be identified by student or by faculty-staff racial composition, are created by policies such as school closing and construction, busing exemptions for racially mixed schools, and assignment that either increases or decreases the link between residential location and school assignment.[7] Racially identifiable schools play an important role in real estate advertisements and racial steering by realtors. Schools, for instance, are prominently mentioned in ads for homes in neighborhoods where the racial composition of the schools may be in doubt; schools that are so mentioned are typically 99% to 100% white.[8] Conversely, the closing of neighborhood schools in racially mixed neighborhoods can lessen the attractiveness of such neighborhoods by depriving them of their "own" neighborhood schools. This is especially true when neighborhoods which are racially identifiable are allowed to maintain their own, racially identifiable schools.

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[6] D. PEARCE, BREAKING DOWN BARRIERS: NEW EVIDENCE ON THE IMPACT OF METROPOLITAN SCHOOL DESEGREGATION ON HOUSING PATTERNS, (Washington: National Institute of Education, 1980).

[7] D. PEARCE, FINAL REPORT TO THE POTOMAC INSTITUTE ON THE CIVIL RIGHTS ISSUES AND IMPLICATIONS OF SCHOOL CLOSINGS (1984).

[8] D. Pearce, *Deciphering the Dynamics of Segregation: The Role of Schools in the Housing Choice Process*, THE URBAN REVIEW 13 (2):85-101 (1981).

By contrast, communities with desegregated schools foster a different dynamic with respect to housing choice. Since school assignment is not coterminous with the neighborhood, homeseekers and housing agents use other criteria to determine housing location, including convenience to employment, recreation and shopping. Moreover, some school districts, by exempting racially mixed neighborhoods from busing plans, promote the creation and maintenance of stably integrated neighborhoods. Cities such as Denver, Shaker Heights, Ohio, Louisville, Kentucky, and Oak Park, Illinois, have worked aggressively to minimize construction of segregated housing or to use desegregated schools as a tool to minimize racial transition and segregation.[9] Thus, far from being helpless in the face of racial change, school districts have considerable power to help shape and maintain housing patterns, either for the purpose of encouraging desegregation, or for the purpose of reinforcing segregation in both schools and housing.

Although there has been an intense and ongoing debate in social science research on the issue of "white flight" from desegregation plans, there is considerable agreement on several proposition of real importance for desegregation policy. First, basic demographic trends of increasing minority proportions in school districts exist in many cities with no desegregation plans or even with dismantled busing orders. In Atlanta, for example, an agreement to drop litigation for mandatory busing in 1973

[9] W. HAWLEY, ET AL., STRATEGIES FOR EFFECTIVE DESEGREGATION: LESSONS FROM RESEARCH (Lexington, Mass.: D.C. Heath 1983); M. Weinberg, *Housing and School Desegregation: Citizen Initiatives and Government Responses*, INTEGRATED EDUCATION, 18:2-11 (July-August 1980); G. CUNNINGHAM & W. HUSK, THE IMPACT OF COURT-ORDERED DESEGREGATION ON STUDENT ENROLLMENT AND RESIDENTIAL PATTERNS IN THE JEFFERSON COUNTY KENTUCKY PUBLIC SCHOOL DISTRICT, FINAL REPORT (Louisville, Ky.: Jefferson County Education Consortium, June 30, 1979); KENTUCKY COMMISSION ON HUMAN RIGHTS, HOUSING AND SCHOOL DESEGREGATION INCREASED BY SECTION 8 MOVES, (Frankfort, Ky.: Kentucky Commission on Human Rights, April 1980).

was followed by rapid and almost total resegregation of the school district. Second, plans can produce long-lasting integration. Charlotte-Mecklenburg, North Carolina, the first district to implement large scale city-suburban mandatory desegregation, remained highly integrated a generation after its 1971 court order. Among the nation's largest school districts half of the ten reporting the smallest decline in the proportion of white students from 1968-1986 had mandatory county-wide desegregation plans.[10] Some of the most extensive court-ordered plans may actually foster demographic stability. Long lasting desegregation has been achieved in many districts.

II: Desegregation's Impact on Students

Research on the effects of desegregation on students has concentrated on two areas: the effects of desegregation upon students, and the lasting effects of desegregation upon the race relations in society. Of this research, no topic has been given more attention than the evaluation of the achievement of white and black students in desegregated settings. Because of the wide variety of desegregated settings and the limitations of most studies to a single year at the beginning of desegregation, there is no general consensus on the size of achievement test score gains by students. However, there is wide agreement on the basic conclusion: "Desegregation is generally associated with moderate gains in the achievement of black students and the achievement of white students is typically unaffected. . . . The most comprehensive synthesis of case studies, which includes 93 inquiries and uses the statistical techniques employed by the

[10] F.GAILLARD, THE DREAM LONG DEFERRED (Chapel Hill, N.C.: University of North Carolina Press, 1988); G. ORFIELD & F. MONFORT, RACIAL CHANGE AND DESEGREGATION IN LARGE SCHOOL DISTRICTS: TRENDS THROUGH THE 1986-1987 SCHOOL YEAR (Alexandria, Va.: National School Boards Association, 1988); G. Orfield and L. Peskin, *Metropolitan High Schools: Income, Race and Inequality*, in D. MITCHELL AND M. GOERTZ (EDS.), EDUCATION POLITICS FOR THE NEW CENTURY (London: Falmer Press, 1990) pp. 27-53.

most sophisticated researchers on this topic, concluded that the [positive] effect is significant."[11]

A number of factors contribute to the gains for minority students. Experience in a desegregated class may motivate minority students, giving them hope that they will have an opportunity as adults to escape segregated job markets, that successfully competing in an interracial school can lead to later life success.[12] Educators and community leaders may hold higher expectations for achievement for students in integrated

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[11] W. Hawley & M. Smylie, *The Contribution of School Desegregation to Academic Achievement and Racial Integration*, in P. KATZ AND D. TAYLOR (EDS.), ELIMINATING RACISM: PROFILES IN CONTROVERSY (New York: Plenum, 1988), pp. 284-85. *See also* J.S. Coleman *et al.*, EQUALITY OF EDUCATIONAL OPPORTUNITY (Washington, D.C.: U.S. Government Printing Office, 1966); N.H. ST. JOHN, SCHOOL DESEGREGATION: OUTCOMES FOR CHILDREN (New York: Wiley, 1975); C. Jencks and M. Brown, *The Effects of Desegregation of Student Achievement: Some New Evidence from the Equality of Educational Opportunity Survey*, SOCIOLOGY OF EDUCATION 48:136-137 (Winter 1975); R. Crain and R. Mahard, *Desegregation and Black Achievement: A Review of the Research*, LAW AND CONTEMPORARY PROBLEMS, 42:17-56 (1978); R. Crain and R. Mahard, *Some Policy Implications of the Desegregation-Minority Achievement Literature*, in W. HAWLEY (ED.), EFFECTIVE SCHOOL DESEGREGATION: EQUITY, QUALITY AND FEASIBILITY (Beverly Hills, Cal.: Sage, 1981); R. Mahard and R. Crain, *The Effect of Research Methodology on Desegregation-Achievement Studies: A Meta-Analysis*, AMERICAN JOURNAL OF SOCIOLOGY, 88(5): 839-854 (1983); P.M. Wortman and F.B. Bryant, *School Desegregation and Black Achievement: An Integrative Review*, SOCIOLOGICAL METHODS AND RESEARCH 13(3):289-324 (1985); S. Mayer and C. Jencks, *Growing Up in Poor Neighborhoods: How Much Does It Matter?*, SCIENCE 243:1441-1445 (1989).

[12] R. CRAIN, R. MAHARD, & R. NAROT, MAKING DESEGREGATION WORK: HOW SCHOOLS CREATE SOCIAL CLIMATES (Cambridge: Ballinger, 1982); D. Longshore and J. Praeger, *The Impact of School Desegregation: A Situational Analysis*, ANNUAL REVIEW OF SOCIOLOGY, 11:75-91 (1985); J. Ogbu, *Structural Constraints in School Desegregation*, in J. PRAEGER, D. LONGSHORE AND M. SEEMAN (EDS.), SCHOOL DESEGREGATION RESEARCH (New York: Plenum, 1986).

schools, compared to low expectations of minority schools with many low income students.[13] The new access of minority students to quality facilities, learning materials, and teaching techniques, along with the teacher in-service training and the community pressures for achievement that often accompany desegregation, is often significant in raising achievement levels.[14] Research in this area is still ongoing; scholars, for instance, are still investigating exactly why the combination of students of different socioeconomic status tends to increase the achievement of students with lower socioeconomic status.[15] However, it is likely that the combination of several factors, rather than any one in isolation, accounts for the increase in achievement.

In addition, studies on the potential impact of racial and socioeconomic desegregation on Hispanic students show that it improves their chances of completing school and reduces their odds of becoming teen parents. More specifically, a recent study found that Hispanic students who attend high-

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[13] D.J. Veldman & J. P. Sanford, *The Influence of Class Ability Level on Student Achievement and Classroom Behavior*, AMERICAN EDUCATIONAL RESEARCH JOURNAL 21:629-644 (1984); R. L. Crain, Desegregated Schools and the Non-Academic Side of College Survival (paper presented at the American Educational Research Association meeting, New Orleans, April 1984).

[14] HAWLEY AND SMYLIE, 1988, op cit.; G. JAYNES AND R. WILLIAMS, A COMMON DESTINY: BLACKS AND AMERICAN SOCIETY (Washington, D.C.: National Academy Press, 1989); B. Hare, *Self-Perception and Academic Achievement Variation in the Desegregated Setting*, AMERICAN JOURNAL OF PSYCHIATRY, 137:(6) 683-89 (June 1980).

[15] K.B. CARSUD, DOES PAIRING HURT CHAPTER 1 STUDENTS? (Austin, Texas: Office of Research and Evaluation, Austin Independent School District, 1984); D. Walsh, *SES, Academic Achievement, and Reorganization of Metropolitan Area Schools: Preliminary Implication of the Milwaukee Area Study*, METROPOLITAN EDUCATION 1:78-91 (1986); M.B. ARIAS, COMPLIANCE MONITOR'S FIFTH SEMI-ANNUAL REPORT: VASQUEZ V. SAN JOSE (CA) UNIFIED SCHOOL DISTRICT (Submitted to Hon. Robert F. Peckham, Chief U.S. District Judge, San Francisco, Cal., 1989); JENCKS AND MAYER, 1989, *op cit.*

socioeconomic status ("SES") schools are less likely to drop out of high school between the tenth and twelfth grades and that girls who attend high-SES schools are less likely to have a child between the tenth and twelfth grades than students with the same family background who attend lower SES-schools.[16]

It is particularly important to note that white students have not suffered from desegregation. Not only have studies of achievement shown no drop in white achievement scores because of desegregation, white students benefit from the school reforms, teacher training, and intergroup cooperation that can follow desegregation.[17] White students, moreover, continue to participate in their accustomed extracurricular activities after black classmates arrive in school, activities such as sports, music,

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[16] L. GREBLER, *ET AL.*, THE MEXICAN-AMERICAN PEOPLE: SECOND LARGEST MINORITY (New York: Free Press, 1970); H. MANUEL, THE SPANISH-SPEAKING CHILDREN OF THE SOUTHWEST: THEIR EDUCATION AND PUBLIC WELFARE (Austin, Texas: University of Texas Press, 1965); J. Samora, *The Education of the Spanish-Speaking People in the Southwest: An Analysis of 1960 Data*, in SUMMARY OF THE MEXICAN-AMERICAN SEMINAR PRESENTED BY CAREERS FOR YOUTH AND THE MEXICAN-AMERICAN COMMUNITY OF PHOENIX (Phoenix, Ariz., 1963); UNITED STATES COMM'N ON CIVIL RIGHTS, MEXICAN-AMERICAN EDUCATION STUDY, REPORTS I-VI (April 1971-February 1974); *Mexicano/Chicano Concerns in School Desegregation in Los Angeles*, Monograph No. 9 (Los Angeles: University of California at Los Angeles, Chicano Studies Center Publication, 1977); S.E. Meyer, *How Much Does a High School's Racial and Socioeconomic Mix Affect Graduation and Teenage Fertility Rates?*, in C. JENCKS & P. PETERSON (EDS.), THE URBAN UNDERCLASS (Washington, D.C.: Brookings Institute, 1991).

[17] M. WEINBERG, SEARCH FOR QUALITY INTEGRATED EDUCATION (Westport, Conn.: Greenwood, 1983); J. SCHOFIELD, REVIEW OF SCHOOL DESEGREGATION'S IMPACT ON ELEMENTARY AND SECONDARY SCHOOL STUDENTS (Hartford, Conn.: State Department of Education, 1989).

academic interest clubs, and school-support activities.[18] And as is discussed in later sections, desegregation can serve as the occasion for students of different races to learn to work together in our increasingly multi-ethnic society.

White students benefit from learning to function in a racially diverse setting that can prepare them for the workforce of the future. In the United States between 1980 and 1990 the growth of white population was half as rapid as that of black population and about one-seventh the rate of Hispanic increase. A major report to the U.S. Department of Labor, WORKFORCE 2000, shows that only a small minority of the added workers in the next generation will be white males. The public school population of the nation's largest state, California, already has a large non-white majority. The U.S. Equal Employment Opportunities Commission's 1984 report, PROJECT 2000: JOB AND TRAINING OPPORTUNITIES FOR MINORITIES AND WOMEN, concludes that demographic changes within the workforce, the changing structure of jobs, and the increasing need for "access to training and education" will be critical to our future economy. Whites who know how to function effectively in a multiracial setting will have substantial advantages in the job settings of the future.[19]

The benefits of desegregation for minorities as well as whites extend beyond the school experience. Education is important in large part because of the opportunities and life chances a good school gives to its students. Historic discrimination against

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[18] V. Wilson, The Relationship Between Racial Composition of Desegregated High Schools and Membership in Co-Curricular Programs in Baltimore City (doctoral dissertation, Temple University, 1978).

[19] WORKFORCE 2000: WORK AND WORKERS FOR THE 21ST CENTURY (Indianapolis: Hudson Institute, 1987); U.S. EQUAL EMPLOYMENT OPPORTUNITIES COMMISSION, PROJECT 2000: JOB AND TRAINING OPPORTUNITIES FOR MINORITIES AND WOMEN (Washington, D.C.: Government Printing Office, 1984).

blacks in the labor market resulted in structural barriers which close off opportunities to blacks. Attending desegregated schools seems to help to break down these barriers. Black students who go to desegregated schools tend to have more friends of other races, work in higher-status jobs, live in integrated neighborhoods, attend and graduate from multiracial colleges and evaluate their own skills and education in more realistic ways when choosing an occupation.[20] This is extremely

[20] W.W. Falk, *School Desegregation and the Educational Attainment Process: Some Results from Rural Texas Schools*, SOCIOLOGY OF EDUCATION 51:282-288 (1978); K.L. Wilson, *The Effects of Integration and Class on Black Educational Attainment*, SOCIOLOGY OF EDUCATION 52:84-98 (1979); J. Braddock, *The Perpetuation of Segregation Across Levels of Education: A Behavioral Assessment of the Contact Hypothesis*, SOCIOLOGY OF EDUCATION, 53:178-186 (1980); J. Braddock & J. McPartland, *Going to College and Getting a Good Job: The Impact of Desegregation*, in HAWLEY (ED.), 1981, *op cit.*; G. Orfield, *Housing Patterns and Desegregation Policy*, in HAWLEY (ED.), 1981, *op cit.*; J.W. Hoelter, *Segregation and Rationality in Black Status Aspiration Processes*, SOCIOLOGY OF EDUCATION, 55:31-39 (1982); R.K. GABLE, D.L. THOMPSON, & E.F.IWANICKI, THE EFFECT OF VOLUNTARY SCHOOL DESEGREGATION ON OCCUPATIONAL OUTCOMES (American Educational Research Association Meeting, New York, 1982); J. BRADDOCK AND J. MCPARTLAND, MORE EVIDENCE ON THE SOCIAL-PSYCHOLOGICAL PROCESSES THAT PERPETUATE MINORITY SEGREGATION: THE RELATIONSHIP OF SCHOOL DESEGREGATION AND HOUSING DESEGREGATION (REPORT 338) (Baltimore: Johns Hopkins University, Center for the Social Organization of Schools, 1983); W. Trent, *Equity Considerations in Higher Education: Race and Sex Differences in Degree Attainment and Major Field from 1976-1981*, AMERICAN JOURNAL OF EDUCATION 41:280-305 (1984); R. CRAIN & J. STRAUSS, SCHOOL DESEGREGATION AND BLACK OCCUPATIONAL ATTAINMENT: RESULTS FROM A LONG-TERM EXPERIMENT (Baltimore: Center for Social Organization of Schools, Johns Hopkins University, 1985); G. THOMAS, THE ACCESS AND SUCCESS OF BLACKS AND HISPANICS IN US GRADUATE AND PROFESSIONAL EDUCATION (Washington, D.C.: National Academy of Sciences, 1986); R. Johnson, *Factors Related to the Postbaccalaureate Careers of Black Graduates of Selected Four Year Institutions in Alabama*, in A. PRUITT (ED), IN PURSUIT OF EQUALITY IN HIGHER EDUCATION (Dix Hills, N.Y.: General Hall, 1987); J. Braddock & J. McPartland, *Social Psychological Processes that Perpetuate Racial Segregation: The Relationship Between School*

important in the light of new studies which show that the social isolation of minorities in poor urban ghettos forms the greatest barrier to their social and economic mobility.[21] In the largest study to test these hypotheses to date, black students who were randomly assigned to integrated suburban schools rather than segregated city schools were less likely to have dropped out of high school, gotten into trouble with the police, borne a child before age 18, dropped out of college, or feel discriminated against in college, and were more likely to have white friends and live in integrated neighborhoods.[22] All of these factors point to the benefits of increasing racial integration in the society at large, which can be fostered by desegregation.

To summarize, desegregation has clear benefits for black students. It does not harm the academic achievement of white students and may well be beneficial in their future work. Its benefits extend beyond the classroom to the larger issues of

and Employment Desegregation, JOURNAL OF BLACK STUDIES, 19:267-289 (1989); E. Camburn, *College Completion Among Students from High Schools Located in Large Metropolitan Areas*, in G. ORFIELD (ED). CHANGING PATTERNS OF OPPORTUNITY IN HIGHER EDUCATION: AMERICAN JOURNAL OF EDUCATION (Special Issue), 98(4):551 (August 1990).

[21] W.J. WILSON, THE TRULY DISADVANTAGED (Chicago: University of Chicago Press, 1987).

[22] R. CRAIN, *ET AL.*, A LONGITUDINAL STUDY OF A METROPOLITAN VOLUNTARY SCHOOL DESEGREGATION PLAN (New York: Institute for Urban and Minority Education, Teachers College, 1991); R. CRAIN & C. WEISMAN, DISCRIMINATION, PERSONALITY, AND ACHIEVEMENT (New York: Seminar Press, 1972); J. Braddock & J. McPartland, *Assessing School Desegregation Effects: New Directions in Research*, in R. CORWIN (ED.), RESEARCH IN SOCIOLOGY OF EDUCATION AND SOCIALIZATION (Greenwich, Conn.: JAI, 1982); K.C. Green, Integration and Educational Attainment: A Longitudinal Study of the Effects of Integration on Black Educational Attainment and Occupational Outcomes (doctoral dissertation, University of California, Los Angeles, 1982); E.F. Furstenberg, *et al.*, *Race Differences in the Timing of Adolescent Intercourse*, AMERICAN SOCIOLOGICAL REVIEW 52:511-518 (1987).

integration in employment, higher education, and housing. Merely placing black and white children together in school, however, does not achieve these goals. Desegregation is a process, not an event. There is nothing to suggest that brief exposure to whites, in schools that do nothing else to produce equal opportunity, will cure the harms created by a history of segregation. Thus, it is to the conditions of successful desegregation that we now turn.

III: Necessary Conditions for Effective Desegregation

Assigning minority and white students to the same school is no panacea for educational inequality. The creation of racially-mixed rather than racially-segregated schools is just the beginning of the long-term process of interracial schooling. At both the district level and within the school, strategies to promote rather than decrease racial tolerance and increase rather than alienate community support can be put into place. We summarize some of these strategies here.

The wide variety of desegregation plans and school district conditions in the United States has allowed researchers to examine the merits of different desegregation plans. On the district level, these studies suggest that successful plans: (1) desegregate as many grades as possible at the same time, concentrating especially on the youngest students; (2) cover as large a geographic area as possible to include a broad spectrum of socioeconomic classes as well as races; and (3) persevere with the long-range goal of desegregation, despite opposition.

From the perspective of race relations, these findings have several explanations. When a student's entire school career will be in a desegregated setting, everyone becomes motivated to make the experience work. However, if desegregation will affect a student for only a few years, it becomes feasible for parents to skirt desegregation by sending their children to

private school for those years.[23] Whites who attend segregated elementary schools are also less accepting of desegregated education in high school, thus providing an additional reason to desegregate in the early grades.[24] Moreover, when an entire district is included, all socioeconomic groups have an interest in the successful outcome of school desegregation; each group is less likely to feel that they have been "burdened" unfairly and decide to leave the public school system.[25] For this reason, evidence from Charlotte-Mecklenberg, Atlanta, Dallas, Boston, Denver, Riverside, San Jose, and districts in Georgia and Atlanta and many other cities show that area-wide desegregation produces more enrollment stability than desegregation limited to part of an urban community.[26]

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[23] M.Giles, *Racial Stability and Urban School Desegregation*, URBAN AFFAIRS QUARTERLY 12 (1977).

[24] COLEMAN, *ET AL.*, 1986, *op cit.*; W.D. Hawley, *Equity and Quality in Education: Characteristics of Effective Desegregated Schools*, in HAWLEY (ED.), 1981, *op cit.*; J. McConahay, *Reducing Racial Prejudice in Desegregated Schools*, in HAWLEY (ED.), 1981, *op cit.*; J.H. Schweitzer and R.J. Griffore, *A Longitudinal Study of Attitudes of Students and Parents with Court-Ordered School Desegregation*, URBAN REVIEW 13:2 (1981); M. PATCHEN, BLACK-WHITE CONTACT IN SCHOOLS: ITS SOCIAL AND ECONOMIC EFFECTS (West Lafayette, Ind.: Purdue University Press, 1982); D.W. JOHNSON, *ET AL.*, INTERDEPENDENCE AND INTERPERSONAL ATTRACTION AMONG HETEROGENEOUS AND HOMOGENOUS INDIVIDUALS: A THEORETICAL FORMULATION AND A META-ANALYSIS OF THE RESEARCH (University of Minnesota, unpublished manuscript, 1982); J. Raffel, PUBLIC OPINION TOWARD THE PUBLIC SCHOOLS OF NORTHERN NEW CASTLE COUNTY (University of Delaware, College of Urban Affairs and Public Policy, unpublished manuscript, 1983).

[25] G. Orfield, *Why It Worked in Dixie: Southern School Desegregation and Its Implications for the North*, in A. YARMOLINSKY, *ET AL.*, RACE AND SCHOOLING IN THE CITY (Cambridge, Mass.: Harvard University Press, 1981).

[26] J.Finger, *Why Busing Plans Work*, in F. LEVINSON & B. WRIGHT, SCHOOL DESEGREGATION: SHADOW AND SUBSTANCE (Chicago: University of Chicago, 1976); M. GILES, ET AL., DETERMINANTS OF RESEGREGATION:

Students seem to achieve better academically when they are desegregated at younger ages.[27] Minority achievement is higher for students in classes with mixed socioeconomic status, which undergirds the findings on the benefit of a broad desegregation plan.[28] Academic tracking can produce segregated classes within desegregated schools, which can undo the benefits of classes where students are both racially and socioeconomically integrated.[29]

COMPLIANCE/REJECTION BEHAVIOR AND POLICY ALTERNATIVES (Washington, D.C.: National Science Foundation, 1976); D. Lord and J. Catau, *School Desegregation Policy and Intra-School District Migration*, SOCIAL SCIENCE QUARTERLY, v. 57 (1977); C. Rossell and J. Ross, The Long-term Effect of Court-Ordered Desegregation on Student Enrollment in Central City Public School Systems: The Case of Boston, 1974-79 (Boston University, unpublished manuscript, 1979); C. CLOTFELTER, PREPARED STATEMENT TO THE SENATE JUDICIARY COMMITTEE, SUBCOMMITTEE ON SEPARATION OF POWERS, HEARINGS ON COURT-ORDERED SCHOOL BUSING, 97TH CONGRESS, 1ST SESSION (1981).

[27] CRAIN AND MAHARD, 1978, 1981, 1983, *op cit.*; N. St. John, *The Effects of School Desegregation on Children: A New Look at the Research Evidence*, in YARMONLINSKY, *ET AL.* (EDS.), 1981, *op cit.*; R. Krol, A Meta-Analysis of Comparative Research on the Effects of Desegregation on Academic Achievement (doctoral dissertation, Western Michigan University, 1980).

[28] COLEMAN, *ET AL.*, 1966, *op cit.*; R. BRIDGE, C. JUDD, & P. MOOCK, THE DETERMINANTS OF EDUCATIONAL OUTCOMES: THE EFFECT OF FAMILIES, PEERS, TEACHERS, AND SCHOOLS (New York: Teachers College Press, 1979); Crain, *et al.*, 1982, *op cit.*; R. Henderson, *et al.*, *Remedies for Segregation: Some Lessons from Research*, EDUCATIONAL EVALUATION AND POLICY ANALYSIS (1981).

[29] NATIONAL INSTITUTE OF EDUCATION, COMPENSATORY EDUCATION STUDY (Washington, D.C.: U.S. Government Printing Office, 1980); C. Kulik & J. Kulik, *Effects of Ability Grouping on Secondary School Students: A Meta-Analysis of Evaluation Findings*, AMERICAN EDUCATIONAL RESEARCH JOURNAL 19:3 (1982); J. OAKES, KEEPING TRACK: HOW SCHOOLS STRUCTURE INEQUALITY (New Haven, Conn: Yale University Press, 1985).

The benefits of desegregation take place over the long-term. When judicial requirements are unambiguous, and enforcement agencies promulgate precise regulations, desegregation is much more likely to succeed than when opposition leads judicial or agency principles to be stated in ambiguous or unclear terms.[30] Schools that allow their desegregative goals to be derailed will often have paid the costs but not achieved the benefits of desegregation.[31] Persistence allows schools to move past the period of community opposition and white flight, which may be strong within the first year of a plan but then decline rapidly.[32]

Successful desegregation takes place not only within the district but within schools. The many studies on desegregation show that the way in which desegregated schools are structured is crucial in determining whether students of all racial and ethnic groups have an equal opportunity to develop their full potential and cooperate to produce social harmony. For instance, carefully structured cooperation, whether it be in extracurricular activities or in classroom cooperative learning

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[30] C. Bullock, *The Office For Civil Rights and Implementation of Desegregation Programs in the Public Schools*, POLICY STUDIES JOURNAL 8:606 (1980); Orfield, 1981, *op cit.*; G. ORFIELD, PUBLIC SCHOOL DESEGREGATION IN THE UNITED STATES, 1968-80 (Washington, D.C.: Joint Center for Political Studies, 1983); M. REBELL & A. BLOCK, EQUALITY AND EDUCATION: FEDERAL CIVIL RIGHTS ENFORCEMENT IN THE NEW YORK CITY SCHOOL SYSTEM (Princeton, N.J.: Princeton University Press, 1985).

[31] G. FOREHAND, M. RAGOSTA, & D. ROCK, CONDITIONS AND PROCESSES OF EFFECTIVE SCHOOL DESEGREGATION (Princeton, N.J.: Educational Testing Service, 1976); KROL, 1980, *op cit.*; D. MORGAN & R. ENGLAND, ASSESSING THE PROGRESS OF LARGE CITY SCHOOL DESEGREGATION: A CASE SURVEY APPROACH (University of Oklahoma, Bureau of Government Research, Unpublished Report, 1981); J. BRADDOCK AND J. MCPARTLAND, 1982, *op cit.*; C. Rossell, *Desegregation Plans, Racial Isolation, White Flight, and Community Response*, in C. ROSSELL AND W. HAWLEY (EDS.), THE CONSEQUENCES OF SCHOOL DESEGREGATION (Philadelphia: Temple University Press, 1983).

[32] ROSSELL, 1983, *op cit.*

groups, can have positive effects on both academic achievement and race relations.[33] Cooperative learning groups also increase academic achievement, student-to-student help, cross-race interactions outside the classroom, self-esteem, liking for teachers, and ability to empathize.[34]

A second theme which emerges from this work is the importance of finding ways to give the members of each group a sense that they are influential and valued within the context

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[33] E. ARONSON, *ET AL.*, THE JIGSAW CLASSROOM (Beverly Hills, Cal.: Sage, 1978); S. Sharan, *Cooperative Learning In Teams: Recent Methods and Effects on Achievement, Attitudes, and Ethnic Relations*, REVIEW OF EDUCATIONAL RESOURCES 50:241-272 (1980); R. Slavin, *Student Team Learning: A Manual for Teachers*, in S. SHARAN, *ET AL.* (EDS.), COOPERATION IN EDUCATION (Provo, Utah: Brigham Young University Press, 1980); R. SLAVIN, COOPERATIVE LEARNING (New York: Longman, 1983); R. Slavin, *When Does Cooperative Learning Increase Student Achievement?*, PSYCHOLOGICAL BULLETIN, 94:429-445 (1983); R. Slavin, *Cooperative Learning: Applying Contact Theory in Desegregated Schools*, JOURNAL OF SOCIAL ISSUES 41:45-62 (1985); Johnson & Johnson, 1982, *op cit.*; J. Schofield & A. Sagar, *Desegregation, School Practices and Student Race Relations*, in ROSSELL & HAWLEY (EDS.), 1983, *op cit.*

[34] G. FOREHAND & M. RAGOSTA, A HANDBOOK FOR INTEGRATED SCHOOLING (prepared for the U.S. Office of Education, Department of Health, Education and Welfare) (Princeton, N.J.: Educational Testing Service, 1976); E. Cohen, *Design and Redesign of the Desegregated School: Problems of Status, Power, and Conflict*, in W.G. STEPHAN AND J.R. FEAGIN (EDS.), SCHOOL DESEGREGATION: PAST, PRESENT, AND FUTURE (New York: Plenum Press, 1980); SLAVIN, 1981, *op cit.*; W. HAWLEY, ET AL., STRATEGIES FOR EFFECTIVE DESEGREGATION: A SYNTHESIS OF FINDINGS (Nashville, Tenn.: Vanderbilt University, Institute for Public Policy Studies, 1981); J. Schofield, *Desegregation, School Practices and Student Race Relations Outcomes*, in C. ROSSELL, ET AL., A REVIEW OF THE EMPIRICAL RESEARCH ON DESEGREGATION (Nashville, Tenn.: Vanderbilt University, Institute for Public Policy Studies, 1981); D. JOHNSON & R. JOHNSON, LEARNING TOGETHER AND ALONE: COOPERATION, COMPETITION, AND INDIVIDUALIZATION (Englewood Cliffs, NJ: Prentice Hall, 1982); W. Lacey, *et al.*, *Fostering Constructive Intergroup Contact in Desegregated Schools*, JOURNAL OF NEGRO EDUCATION 52:2 (1983).

of the school and school system. For example, community and parental involvement in developing, implementing, and monitoring the desegregation plan is very helpful in gaining community acceptance and support.[35] There is also evidence that utilizing multi-ethnic texts, avoiding unnecessary ability grouping, applying disciplinary codes fairly to avoid punishing students for cultural differences, changing symbols and customs of the school to put "old and "new" on equal footing, and incorporating detailed, practical, timely and empathetic human relations programs for teachers and students also help to create an inclusive school community and minimize racial and social tensions.[36]

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[35] W. HAWLEY, *ET AL.*, STRATEGIES FOR EFFECTIVE DESEGREGATION, (Lexington, Mass.: D.C. Heath, 1983); B. Hare, *Black and White Self Esteem in Social Science: An Overview*, JOURNAL OF NEGRO EDUCATION, 46(2):141-156 (Spring 1977).

[36] HAWLEY, *ET AL.*, 1983, *op cit.*; W.G. Stepan & C.W. Stepan, *The Role of Ignorance in Intergroup Relations*, in N. MILLER & M.B. BREWER (EDS.), GROUPS IN CONTACT: THE PSYCHOLOGY OF DESEGREGATION (Orlando, Florida: Academic Press, 1984); J.R. Mercer, *et al.*, *Building Effective Multi-ethnic Schools: Evolving Models and Paradigms*, in STEPHAN & FEAGIN (EDS.), 1980, *op cit.*; HENDERSON, *ET AL.*, 1981, *op cit.*; CRAIN, *ET AL.*, 1982, *op cit.*; FOREHAND, *ET AL.*, 1976, *op cit.*; W.J. DOHERTY, *ET AL.*, HUMAN RELATIONS STUDY: INVESTIGATIONS OF EFFECTIVE HUMAN RELATIONS STRATEGY, VOL. 2 (Santa Monica, Cal.: Systems Development Corporation, 1981); M. SMYLIE & W. HAWLEY, INCREASING THE EFFECTIVENESS OF IN-SERVICE TRAINING FOR DESEGREGATION: A SYNTHESIS OF CURRENT RESEARCH (Washington, D.C.: National Education Association, 1982); H. Walberg, *et al.*, *The Quiet Revolution in Educational Research*, PHI DELTA KAPPAN, 1979; R. Slavin & N. Madden, *School Practices That Improve Race Relations*, AMERICAN EDUCATIONAL RESEARCH JOURNAL, 1979; C. MOODY, *ET AL.*, STUDENT RIGHTS AND DISCIPLINE: POLICIES, PROGRAMS, AND PROCEDURES (Ann Arbor, Mich.: University of Michigan, School of Education, 1978); B. BOSMA, PLANNING FOR AND IMPLEMENTING EFFECTIVE SCHOOL DESEGREGATION: THE ROLE OF TEACHER ASSOCIATIONS (Washington, D.C.: U.S. Government Printing Office, 1980); J. BROPHY & T. GOOD, TEACHER-STUDENT RELATIONSHIPS: CAUSES AND CONSEQUENCES (New York: Holt, Rinehart, and Winston, 1974); J. EPSTEIN, AFTER THE BUS ARRIVES: RESEGREGATION IN DESEGREGATED

It is important that schools have minority faculty, including college counselors, and that white teachers are supportive of desegregation.[37] Historically, desegregation of teachers and students has progressed together, since very little desegregation occurred before *Rogers v. Paul*, 382 U.S. 198 (1964), the first major decision on teacher desegregation. Adult role models of both races working together in a school are important for minority and white students. There is some evidence that minority teachers may be less likely to use racially segregated instructional groupings than white teachers, to be less likely to place black and other minority students in lower instructional tracks, and to be more likely to expect black students to enter and complete college.[38] The presence of substantial numbers of minority administrators and teachers serves as a symbol of the fact that expertise and power are shared. Leadership which supports racial equality from the top of the school system on down is necessary. Research on children indicates that when a school or school district decides to take affirmative and persistent action to ensure positive outcomes of desegregation, such benefits occur.

SCHOOLS (Baltimore, Maryland: Johns Hopkins University, Center for the Social Organization of Schools, 1983); W. GENOVA AND H. WALBERG, A PRACTITIONER'S GUIDE FOR ACHIEVING STUDENT INTEGRATION IN CITY HIGH SCHOOLS (Washington, D.C.: U.S. Government Printing Office, 1981).

[37] BRIDGE, *ET AL.*, 1979, *op cit.*; CRAIN, *ET AL.*, 1982, *op cit.*; CRAIN & MAHARD, 1978, *op cit.*; DOHERTY, *ET AL.*, 1981, *op cit.*; HAWLEY, *ET AL.*, 1983, *op cit.*; J. Epstein, *After the Bus Arrives*, JOURNAL OF SOCIAL ISSUES, 41(3): 23-43 (1985); R. MURNANE, THE IMPACT OF SCHOOL RESOURCES ON THE LEARNING OF INNER CITY CHILDREN (Cambridge: Ballinger, 1975).

[38] BRIDGE, *ET AL.*, 1979, *op cit.*; CRAIN & MAHARD, 1978, *op cit.*; DOHERTY, *ET AL.*, 1981, *op cit.*; C. Beady and S. Hansell, *Teacher Race and Expectations for Student Achievement*, AMERICAN EDUCATIONAL RESEARCH JOURNAL, 18:191-206 (1983); J. Epstein, After the Bus Arrives: Resegregation in Desegregated Schools (paper presented at the American Educational Research Association Annual Meeting, Boston, April 1980).

Thus, desegregation is not just a matter of placing children in the same schools; it is a process of developing techniques that will further the goals of racial integration, including quality education for all students and racial harmony. It is not surprising, therefore, that desegregation has often led to educational reforms within school districts.

IV: Educational Reform and Desegregation

Desegregation plans have been a leading source of educational innovation during the past two decades. As one researcher concludes, "There is probably more active educational rethinking and searching for new approaches in desegregated schools than in any other group of American schools."[39] Almost all major desegregation orders since 1980 have included educational changes as part of the remedy.

The goal of achieving racial equity in a school system has produced development of a wide array of new educational approaches ranging from magnet schools to new instructional strategies and curricular changes. New desegregation plans often were occasions for creation of new grade structures and usually involved some retraining of teachers. Sophisticated school administrators have often used the advent of the major reorganization involved in a desegregation plan to build public support for reforms that they had been unable to accomplish earlier. The experience shows that desegregation is not a barrier to educational change but, to the contrary, often provides the occasion for it. The federal Emergency School Aid Act in the 1970s and the current magnet school program were explicit congressional recognitions of these linkages, which have become even more common since the Supreme Court's decision in *Milliken v. Bradley*, 433 U.S. 266 (1976) ("*Milliken II*"). As the preceding sections have demonstrated, a school district

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[39] M. WEINBERG, MINORITY STUDENTS: A RESEARCH APPRAISAL (Washington, D.C.: National Institute of Education, 1977), p. 329.

determined to "eliminate segregation root and branch" will consciously choose to implement innovative teaching techniques, such as cooperative learning groups, to improve student achievement and increase racial harmony. Magnet schooling, a major educational reform of the last two decades, was first developed as a desegregative tool.[40]

The largest review to date of published knowledge and interviews with experts was commissioned by the Ford Foundation and carried out at Duke and Vanderbilt Universities. One of the books which came out of that effort noted that major educational reforms commonly follow school desegregation: "Based on reports from observers around the country it appears that desegregation often leads to curricular changes, more teacher training, and new programs that have positive influences on student learning and academic performance."[41] Reform may be easier after desegregation because there is greater perceived need for change. Also, the reassignment of teachers and students, in response to desegregation decrees, can break up entrenched centers of resistance to change. The National Research Council concluded, in a study of the narrowing achievement gap between black and white students, that the combined effects of school desegregation and reforms opening educational opportunities to minority students presented "a challenge to commentators who judge that these programs failed."[42] A major study of long-term trends in achievement shows that the national gap between black and white students fell following the implementation of desegregation and federal compensatory

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[40] M.H. Metz, *Magnet Schools and the Reform of Public Schooling*, in W.L. BOYD & H.J. WALBERG (EDS.), CHOICE IN EDUCATION: POTENTIAL AND PROBLEMS (Berkeley, Cal.: McCutchan, 1990)

[41] HAWLEY, *ET AL.*, 1983, *op cit.*, p. 12.

[42] JAYNES & WILLIAMS, 1989 *op cit.*, p. 352.

education reforms in the 1960s. There were particularly striking gains for black students in the South.[43]

Planning for educational reform without considering racial issues can be self-defeating: "Avoiding discussion of race and of how school policy may affect blacks differently than whites results in blacks having severely restricted access to school resources such as untracked remediation, enrichment activities, advanced reading groups, and various privileges that make school life enjoyable."[44] Alert teachers and administrators in desegregated schools, especially those serving students of varied social classes or students entering with widely scattered skill levels, will be pushed to look for innovative, reforming, approaches to teaching. One study describes how frustrated southern teachers in newly desegregated schools in one district gradually learned to understand and then to teach children the varied ways in which members of the different social groups used language.[45] Another study reports that teachers of different races informally educated each other about culturally based learning patterns among students and effective responses to them.[46]

Many large urban districts, as well as smaller systems, have used magnet schools as one component of desegregation, emphasizing educational innovation, choice, and racial diversity

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[43] D. KORETZ, TRENDS IN EDUCATIONAL ATTAINMENT (Washington, D.C.: Congressional Budget Office, 1986).

[44] J. Goetz & E. Breneman, *Desegregation and Black Students' Experiences in Two Rural Southern Elementary Schools*, ELEMENTARY SCHOOL JOURNAL, 88:500 (1988).

[45] S.B. HEATH, WAYS WITH WORDS: LANGUAGE, WORK AND LIFE IN COMMUNITIES AND CLASSROOMS (New York: Cambridge University Press, 1983).

[46] M.H. METZ, DIFFERENT BY DESIGN: THE CONTEXT AND CHARACTER OF THREE MAGNET SCHOOLS (New York: Routledge, 1986).

as basic goals. Magnet schools, which have often been designed as part of a desegregation plan, have proven in some cases to be both a successful desegregative tool (when used on a large scale) and a significant source of educational enrichment for their students.[47] Some magnets have been designed to emphasize performing arts, non-traditional teaching methods concentrating on individual instruction, open education and resource centers, and instruction in specific subjects.[48] If not designed with integration as a basic part of the goals, magnets can deliver innovations primarily to the most privileged local students and produce more stratified school districts.[49] It seems clear from the magnet experience that, far from being mutually exclusive, racial integration, quality education, and expanded educational choice, can actually be complementary.

What is clear from the research summarized above is that desegregation is as much a school-district led process as a judicially controlled one. Desegregation creates possibilities and can provide the opportunity for reform and, sometimes, new resources for reform, but school authorities must make decisions to create a school system which promotes equal opportunities for students of all races. By exploring possibilities for educational innovation and racial harmony, they can further the

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[47] C. Rossell, *What Is Attractive About Magnet Schools?*, URBAN EDUCATION 14 (April 1985); C. ROSSELL AND R. CLARKE, THE CARROT OR THE STICK IN SCHOOL DESEGREGATION POLICY? (Washington, D.C.: National Institute of Education, 1987); METZ, 1990, *op cit.*

[48] METZ, 1986, *op cit.*; METZ, 1990, *op cit.*

[49] J. SCHOFIELD, BLACK AND WHITE IN SCHOOL: TRUST, TENSION, OR TOLERANCE? (New York: Praeger, 1982); J. Rosenbaum and S. Presser, *Voluntary Racial Integration in a Magnet School*, SCHOOL REVIEW 86(2):156-186 (February 1978).

process of desegregation; by failing to capitalize on possibilities for positive change, they can derail or postpone the process.[50]

V: Conclusion

Desegregation orders change established patterns of behavior and raise new expectations of a school district. Yet as research of the past three decades has shown, school districts can respond to these changes in a variety of ways. School districts who adopt desegregation in good faith are able to use it as an opportunity to increase the achievement of their students, promote racial harmony in the classroom and the community, experiment with innovative educational reforms, and influence integrated housing patterns. On the other hand, a weak or inadequate plan or local officials opposed to the process of desegregation can resegregate students within the schools, cling to established ways of teaching, speed neighborhood resegregation, foster interracial tensions within a desegregated school, or create racially identifiable schools that lack key advantages of desegregation. With appropriate plans, persistence over time in achieving complex and interdependent changes, and recognition of the new opportunities for educational improvements, desegregation can produce lasting changes with benefits for all students and the community as a whole.

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[50] B. HARE & D.U. LEVINE, TOWARD EFFECTIVE DESEGREGATED SCHOOLS: A MONOGRAPH PREPARED FOR THE UNITED STATES DEPARTMENT OF EDUCATION (Washington, D.C.: National Institute of Education, 1984).

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